

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

Criminal No. 2:15-cr-00212

ABIGALE LEE MILLER,
Defendant.

Transcript of proceedings on May 8, 2017 United
States District Court, Pittsburgh, Pennsylvania, before Joy
Flowers Conti.

VOLUME II

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P R O C E E D I N G S

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10:06 a.m.

(In open court, Defendant present with counsel:)

THE COURT: Morning. Please be seated.

This is a continuation of the sentencing hearing in the criminal matter United States of America versus Abigale Lee Miller. It's at criminal action Nos. 15-212 and 16-132. Will counsel reenter your appearance?

MR. MELUCCI: Good morning, Your Honor. Gregory Melucci for the United States.

MR. RIDGE: Morning, Your Honor. Robert Ridge, Brandon Verdream, Bill Price and Courtney Murphy from the law firm of Clark Hill on behalf of Ms. Miller.

THE COURT: The last hearing, we were addressing the question of loss, and we have had some supplemental briefing from that period of time.

Is there going to be further evidence, Mr. Melucci?

MR. MELUCCI: Yes, there is, Your Honor. If I may, we had just about wrapped up with Mr. Langford at the end of last hearing.

THE COURT: Yes.

MR. MELUCCI: With the court's permission, and I have the consent of Mr. Verdream, I'd like to put Mr. Langford on for a few more minutes with additional exhibits.

1 THE COURT: This is the accountant?

2 MR. MELUCCI: Yes. He's the FBI agent.

3 THE COURT: He's the accountant?

4 MR. MELUCCI: Correct. And then I think, with that,
5 the government anticipates being done with its evidence, and
6 then the defense case.

7 THE COURT: Okay.

8 MR. MELUCCI: So, I would call Sean Langford to the
9 witness stand, please.

10 THE COURT: The witness has previously been sworn in
11 this case, and you are instructed that you remain under oath.

12 SEAN LANGFORD, a witness herein, having been
13 previously duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MELUCCI:

16 Q. Mr. Langford, good morning.

17 A. Good morning.

18 Q. I'd like to ask you some questions about your
19 investigation.

20 You interviewed somebody named Mark McCormick. Do you
21 know who Mark McCormick is?

22 A. Yes, I do.

23 Q. Who is Mark McCormick?

24 A. Mark McCormick is the partner for -- with Abby Lee Miller
25 for the Abby Lee Apparel. He resides currently down in

1 Louisiana.

2 Q. And what was the relationship, the professional
3 relationship, of course, between Mr. McCormick and Ms. Miller?

4 A. Sure. They had a joint venture together. He would order
5 and organize a lot of the apparel that she was selling
6 merchandise-wise through the Internet and also at the events,
7 domestically and abroad.

8 Q. And in your investigation, Mr. Langford, did you
9 categorize, as best you could, all of the sales that were
10 produced from the sales of those merchandise and incorporate
11 that as part of your calculations into unreported income?

12 A. Correct, yes.

13 Q. Now, in your investigation, you again obtained e-mails
14 from the show producer Collins Avenue, correct?

15 A. Correct.

16 Q. Did you learn something in reading e-mails that concerned
17 whether Collins was paying some of those expenses incurred by
18 the McCormick/Miller joint venture to buy merchandise, rather
19 than Ms. Miller being reimbursed for those expenses through
20 the show?

21 A. That's exactly what we learned.

22 MR. MELUCCI: May I have Exhibit No. 50, please?

23 Q. I'm showing you, Mr. Langford, what's been marked as
24 Government Exhibit No. 50. What is this?

25 A. This is an e-mail from Ms. Miller to Michael Hammond and

1 Mark McCormick on November 15 about 6:42 in the afternoon.

2 Michael Hammond was a producer at Collins Avenue for the
3 show, and Mark McCormick, again, is the joint venture partner
4 for the Abby Lee apparel.

5 Q. Do you recognize the e-mail address from Mark McCormick?

6 A. I do, yes.

7 Q. Would you read that e-mail into the record, please?

8 A. The subject line for the e-mail is "Invoices." Body of
9 the e-mail says, "Michael, thank you so much for taking the
10 time to pay these companies. The less red flags I send up the
11 better, and I do mean better for the franchise and all
12 involved. Invoices will follow from me as well as Mark
13 McCormick via e-mail."

14 Q. Did you then see invoices that were sent directly to the
15 producer to pay directly?

16 A. Yes, I did.

17 Q. Now, the date of this e-mail is November 15, 2012.

18 A. Correct.

19 Q. Was this before the amended plan was presented for
20 approval to Judge Agresti?

21 A. I'm not so sure as I'm sitting here of the date of the
22 amended plan.

23 Q. If the plan confirmation hearing for the amended plan was
24 in December of 2012.

25 A. Yes, that was before.

1 MR. MELUCCI: Can I have, Ms. Wikert, Exhibit No. 51,
2 please?

3 Q. Do you recognize what Exhibit 51 is?

4 A. Yes. This is another e-mail from Mark McCormick to Abby
5 Lee at her e-mail address and Michael Hammond at Collins
6 Avenue dated November 15 of 2012.

7 It says -- subject of the e-mail is "Invoice 2646."
8 There's an attachment to the invoice, invoice 2646, and it
9 reads, "Michael, please see invoices as per Abby," and it's
10 signed Mark.

11 Q. You had just testified, Mr. Langford, about e-mails --
12 invoices being forwarded directly from Mr. McCormick to the
13 show producer.

14 Is this an e-mail that attaches such an invoice?

15 A. Yes, it is.

16 MR. MELUCCI: May I have the second page of that,
17 Ms. Wikert? 51A, excuse me. I'm sorry.

18 Q. Do you recognize this exhibit?

19 A. I do, yes, sir.

20 Q. What is this?

21 A. This is the invoice that was attached to that e-mail from
22 Mr. McCormick.

23 Q. And the total amount of that invoice?

24 A. Invoice looks like \$480.90.

25 Q. And it was billed to what organization?

1 A. The vendor is Winery Toggles, and it is invoice 2646 which
2 was dated September 7 of 2012. The bill to and ship to is
3 Abby Lee Apparel at an address in Parker, Colorado, which is
4 where Mr. McCormick was residing at the time.

5 MR. MELUCCI: Let me have Exhibit 52, please.

6 Q. Do you recognize this e-mail?

7 A. Yes.

8 Q. And what is it dated?

9 A. This e-mail is from Mark McCormick to Michael Hammond and
10 Abby Lee and it's dated November 16, 2012.

11 Q. Does it also attach an invoice?

12 A. It does, yes, sir.

13 MR. MELUCCI: Exhibit 52A, please.

14 Q. Is 52A the attachment to that invoice that went to Michael
15 Hammond?

16 A. Yes, it is.

17 Q. And the amount of that invoice is how much money?

18 A. This invoice was \$14,267.70, and again, it's billed to
19 Abby Lee Apparel and Mark McCormick.

20 MR. MELUCCI: May I have Exhibit 53, please?

21 Q. Do you recognize this e-mail?

22 A. Yes, I do.

23 Q. And it's from Mr. McCormick to who?

24 A. It's to Yuya Su, who was an employee for Collins Avenue,
25 and cced Michael Hammond and Abby Lee. It's dated December

1 18, 2012. Subject is "Invoice 5306" with an attachment --
2 invoice from Baudier Marketing, invoice 5306.

3 Q. The attachment -- there was an attachment to that e-mail?

4 A. Yes, sir.

5 Q. Is that Exhibit 53A, please?

6 A. Yes, it is.

7 Q. What is the amount of that invoice?

8 A. This invoice was for \$11,712.67.

9 MR. MELUCCI: May I have Exhibit 54A, please? 54A
10 and 54B.

11 Q. What is Exhibit 54A?

12 A. 54A is an invoice from Soccer N Stuff from North
13 Huntingdon, PA for apparel, totaling \$1,939.

14 Q. And was this sent to the show producer, Collins Avenue?

15 A. Yes. This one and I believe one other invoice.

16 Q. And is that invoice 54B?

17 A. Yes, sir, again, from Soccer N Stuff for \$3,816.50.

18 Q. Now, was this money that Collins Avenue was paying on
19 behalf of Ms. Miller accounted for in her monthly operating
20 reports?

21 A. I don't believe it was, no. You know, these were invoices
22 directly sent to Collins, and they either paid them out of
23 their own funds or they subtracted it from her talent fee in
24 order to pay these invoices.

25 You know, again, this was -- this would not have been

1 shown in any kind of compensation for a paycheck or an
2 accounts payable check provided to her in order to pay. This
3 was a direct pay from Collins to the vendor.

4 Q. So in the earlier e-mail that I showed you Exhibit No. 50,
5 the mention by Ms. Miller of avoiding raising red flags,
6 what's the significance of that?

7 A. Right. If Collins had paid her, directly to Abigale Lee
8 Miller, she would have had to negotiate that check, put it in
9 her bank account and pay these expenses from a bank account.

10 Theoretically, that bank account should have been the DIP
11 account which would have been disclosed on the monthly
12 operating reports.

13 In the absence of any payments directed to Ms. Miller
14 going into an account that the bankruptcy knew about, these
15 payments were being directly sent from Collins to the vendor
16 and weren't being picked up in any of the MORs.

17 Q. Now, did you also obtain communications from Jeff Collins
18 who is the producer -- was the producer of the dance show
19 "Dance Moms," the TV show?

20 A. Jeff Collins was an employee of Collins Avenue, yes.

21 MR. MELUCCI: May I have Exhibit 56, please?

22 Q. Do you recognize this e-mail, Mr. Langford?

23 A. I do.

24 Q. What is it?

25 A. This is an e-mail from Jeff Collins to Michael Hammond

1 copying Abby Miller and Brian Raymond, her entertainment
2 attorney.

3 MR. RIDGE: Objection, Your Honor. This is hearsay.
4 This is substantive, and this is not just something that comes
5 in in a sentencing hearing.

6 MR. MELUCCI: Your Honor, this is an e-mail sent by
7 Mr. Collins that was copied to Ms. Miller. It was discovery
8 that was produced to Mr. Ridge and Mr. Verdream.

9 This, again, goes to the defendant's intent. We know
10 hearsay is admissible. We have been admitting these e-mails
11 routinely through the last hearing and today's hearing.

12 This, again, goes to the intent of Ms. Miller to
13 deceive the bankruptcy judge and to conceal assets.

14 MR. RIDGE: She's not denying that she concealed
15 assets. This is the first e-mail from Mr. Collins and I've
16 not had an opportunity to cross-examine Mr. Collins, and I
17 won't get one here.

18 MR. MELUCCI: They can call Mr. Collins.

19 THE COURT: This is a sentencing hearing. Hearsay is
20 admissible and I'll give it whatever weight I feel is
21 appropriate.

22 MR. RIDGE: Thank you, Your Honor.

23 BY MR. MELUCCI:

24 Q. Mr. Langford, would you read this e-mail into the record,
25 please?

1 A. The e-mail on the screen here starts on March 13, 2013.
2 Michael Hammond wrote -- is that where you want me to start?

3 Q. Yes.

4 A. "Abby, you will have a call time tomorrow. If you do not
5 show up for work, I will then call your bankruptcy attorney
6 and tell him that we will be fining you for the cost of an
7 episode and hold any moneys due to you. We can and will fine
8 you. We will explain to him or any judge that you are not
9 living up to your contractual obligations. Does he or the
10 judge even know about your Masterclass moneys in cash? If you
11 do not perform you 'Dance Moms' duties, there will be no AUDC.
12 I advise you to show up for work and do your job properly and
13 stop sabotaging the show that actually allows you to make a
14 living. Would five people show up for one of your
15 Masterclasses if not for the celebrity this show has turned
16 you into?"

17 And then above that, Jeff Collins is writing in response
18 to that e-mail, "Does the bankruptcy judge know about the cash
19 Masterclass business?"

20 MR. MELUCCI: Now, let me have Exhibit 57, please,
21 Ms. Wikert.

22 Q. Mr. Langford, Exhibit 57 is the front and back of a check,
23 and the amount of the check is \$50,000 payable to Reign Dance
24 Productions.

25 Do you recognize this check?

1 A. Yes, sir.

2 Q. Where did you obtain this check?

3 A. This check was obtained during the investigation as part
4 of bank records subpoenaed and also from Collins Avenue.

5 Q. Now, what is the significance of this check?

6 A. This is a check that -- Fly Girls, LLC was one of the
7 companies that Collins Avenue used to produce the show. This
8 was one of a sequence of three checks to provide Ms. Miller
9 cumulatively \$100,000 for studio renovations.

10 Q. For the studio where?

11 A. Penn Hills studio. So one check was \$10,000. One check
12 was \$40,000. This check was \$50,000. The check is actually
13 dated January 31 of 2013. It wasn't negotiated and cashed
14 until December 31 of 2013.

15 Q. Now, is December 31, 2013 after Judge Agresti ultimately
16 approved the second amended plan in this bankruptcy case for
17 Ms. Miller?

18 A. Yes.

19 THE COURT: Microphone, please, Mr. Melucci.

20 MR. MELUCCI: I understand, judge. Thank you.

21 Q. After the second amended plan?

22 A. Correct.

23 Q. So the date of this check is when?

24 A. During the pendency of the bankruptcy, January 31 of 2013,
25 and she evidently held this check all year long and deposited

1 it on the last day of 2013.

2 MR. MELUCCI: And Exhibit 57A, please, Ms. Wikert.

3 Q. What is this, Mr. Langford?

4 A. This is the authority for payment. This is an internal
5 Collins Avenue document basically accounting for the \$50,000
6 expenditure payable to Ms. Miller, Reign Dance Productions.

7 The invoice is -- or the authority for payment is dated
8 November 8 of 2012, and it says "Payment one of two." If you
9 can blow that up a little bit. "Payment one of two 50 percent
10 of \$100,000 in network approved funds for studio improvements
11 in excess of initial budget."

12 Q. This check was not deposited until January 20 --

13 A. Until December 31st, 2013.

14 MR. MELUCCI: I'd like to move for the admission of
15 Exhibits 50, 51, 51A, 52, 52A, 53, 53A, 54, 54A, 54B, 55, 56,
16 57 and 57A.

17 MR. VERDREAM: Just subject to the hearsay objection,
18 Your Honor.

19 THE COURT: Which I've already indicated would be
20 overruled, the exhibits with hearsay, and would be given the
21 appropriate weight. On that basis, those exhibits would be
22 admitted.

23 MR. MELUCCI: All right. Before the government
24 closes, there were a couple exhibits that were offered but not
25 formally admitted from the last hearing. I'm going to move

1 for the admission now of those.

2 THE COURT: By the way, do you have hard copies of
3 those other exhibits?

4 MR. MELUCCI: Yes, I do. I can provide the court
5 with those.

6 THE COURT: Just so we have them.

7 MR. MELUCCI: They would be Exhibits 2, 3, 3A, and I
8 believe 49.

9 THE COURT: Exhibit 49?

10 MR. MELUCCI: 49.

11 MR. VERDREAM: No objection, Your Honor.

12 THE COURT: They are admitted.

13 MR. MELUCCI: I think with that, the government --

14 THE COURT: We have to give an opportunity for
15 cross-examination. I don't know if you'll have any further
16 redirect.

17 MR. MELUCCI: Sure. I understand.

18 CROSS-EXAMINATION

19 BY MR. VERDREAM:

20 Q. Good morning.

21 A. Good morning.

22 Q. As you know, I represent Ms. Miller. I have some
23 questions for you today.

24 A. Yes, sir.

25 Q. You testified during the first day of the sentencing back

1 in January that Ms. Miller had undisclosed revenue of
2 approximately \$700,000 during her bankruptcy?

3 A. Correct.

4 Q. And by the way, have you had a chance to review your
5 transcript from January?

6 A. Briefly, yes.

7 Q. Okay.

8 A. It was a long time ago.

9 Q. I understand. If you need, we have a copy, if you need to
10 refresh your memory.

11 A. Great.

12 Q. So you testified that Ms. Miller had approximately
13 \$700,000 of unreported income, and of that was \$288,000 in
14 unreported Collins Avenue checks?

15 A. Correct.

16 Q. And then another part of that was \$387,000 from four
17 sources, Square, Showclix, Paypal and Masterclasses?

18 A. Correct.

19 Q. Let's talk about the 288,000 in unreported Collins Avenue
20 revenue first. This related to 49 checks that were dated in
21 December 2012, correct?

22 A. Correct.

23 Q. And these checks were deposited in January of 2013 in
24 Ms. Miller's bankruptcy counsel escrow account?

25 A. Correct.

1 Q. If we can, let's take a look at Government Exhibit 24D,
2 please. You have that up in front of you?

3 A. Yes, sir.

4 Q. You created this chart, correct?

5 A. Yes, sir.

6 Q. And this is called a summary chart monthly operating
7 report pre-amended December 2012 to October 2013?

8 A. Yes, sir.

9 Q. I think that should probably be December 2010, correct?

10 A. Correct.

11 Q. Just wanted to clarify.

12 A. You got it.

13 Q. There are columns here for television revenue, Showclix,
14 Square, Masterclass/merchandise and Paypal?

15 A. Correct.

16 Q. And the chart purports to show what Ms. Miller disclosed
17 on her pre-amended monthly operating reports in bankruptcy?

18 A. Correct.

19 Q. And under the television revenue column, if you look down
20 to the December 2012 row, do you see that?

21 A. Yes.

22 Q. You have a zero balance, correct?

23 A. Yes.

24 Q. I'm going to show you what I've marked as Defense Exhibit
25 17.

1 Do you see that, Agent Langford?

2 A. Yes, sir.

3 Q. It's a little blurry on my screen, but do you recognize
4 that document?

5 A. Yes, I do.

6 Q. That is in fact the original monthly operating report for
7 December of 2012?

8 A. Correct.

9 Q. And that was filed on January 31st, 2013?

10 A. Correct.

11 MR. VERDREAM: I would move for the admission of
12 Defense Exhibit 17.

13 MR. MELUCCI: No objection.

14 THE COURT: It is admitted.

15 Q. If you could, please, flip to page 3.

16 A. Okay.

17 Q. If you look in the middle to the right of that page,
18 there's a bold faced "Total Income."

19 Do you see that?

20 A. Yes, sir.

21 Q. And there it says \$80,081.99?

22 A. Correct.

23 Q. So that doesn't include the 288,000 in checks?

24 A. No, it does not.

25 Q. Let's take a look though at the filing the very next day.

1 I'm going to show you what I've marked as Defense Exhibit 18.

2 A. Yes, sir.

3 Q. Have you seen that document before?

4 A. Yes, sir.

5 Q. This is in fact the amended monthly operating report for
6 December 2012, correct?

7 A. The first amended December 2012.

8 Q. That's right. The first amended?

9 A. There was another.

10 Q. There was another in October which we'll get to, but this
11 one was filed on February 1st, 2013, correct?

12 A. Correct.

13 Q. That's one day after the original was filed?

14 A. Correct.

15 Q. And if you could, please, flip to page 3 again of that
16 document.

17 A. Yes.

18 Q. And if you look down toward that total income number in
19 bold, you see what looks to be a handwritten number in there
20 of 288,000?

21 A. Yes, sir.

22 Q. And that is in fact the 288,000 in Collins Avenue checks,
23 correct?

24 A. Yes, sir.

25 MR. VERDREAM: I'd move for the admission of Defense

1 Exhibit 18.

2 MR. MELUCCI: No objection.

3 Q. Let's go to Government Exhibit 4A. Let me ask you this,
4 Agent Langford. You're the lead investigator in this case?

5 A. Yes.

6 Q. During your investigation, you have become familiar with
7 these bankruptcy files?

8 A. Somewhat familiar, yes. Some more than others.

9 Q. Some more than others. You've looked at a lot of them?

10 A. Sure.

11 Q. Do you recognize Government Exhibit 4A?

12 A. It says, "Second amended disclosure statement" that was
13 filed at docket 211 on January 18 of 2013.

14 Q. So that's the second amended disclosure statement to the
15 second amended plan of reorganization, correct?

16 A. Appears to be, yes.

17 Q. And if you flip to page -- sorry. My exhibits just got
18 out of order. I'm sorry. I've left it in the government
19 binder that we received.

20 So let's flip to page 11 of that document. If you look in
21 the middle of that document, there's a bold faced line that
22 starts out "State source of funds for planned payments."

23 Do you see where that starts out?

24 A. Yes, sir.

25 Q. And then there's eventually a colon, and then the second

1 sentence after that colon, can you read that, please?

2 A. Can you enlarge that for me, please?

3 Q. It would be where it starts, "The debtor."

4 A. "The debtor will fund the plan from operation of her dance
5 studio and income from the reality TV shows in which she is
6 cast. The debtor has deposited \$288,137.57 into the Calaiaro
7 & Corbett PC escrow account."

8 Q. That's all you have to read unless you want to read more,
9 but that's fine. That's all I need.

10 And the date of this? Again, this was filed on January
11 18, 2013?

12 A. Correct.

13 Q. So that's 13 days prior to when that original monthly
14 operating report was filed on January 31st, 2013?

15 A. Correct.

16 Q. So let's go back to Exhibit 24D.

17 MR. MELUCCI: Government 24D?

18 MR. VERDREAM: Yes, Government Exhibit 24D. Thank
19 you.

20 Q. Again, looking at that December row under "Television
21 Revenue" which is a zero balance, as we've just discussed, the
22 \$288,000 in Collins Avenue checks, they were disclosed on
23 January 18, 2013 as part of that disclosure statement, the
24 second amended plan, correct?

25 A. It was detailed in the disclosure statement, yes.

1 Q. And then it was -- I'm sorry.

2 A. I would agree, yeah.

3 Q. And then it was disclosed on an amended monthly operating
4 report, which was filed one day after the original was filed,
5 correct?

6 A. Correct. This summary chart was pre-amended MOR. So this
7 was on an original MOR which says zero for December, which is
8 what she disclosed on her original MOR for December.

9 Q. You would agree 13 days before she disclosed it in
10 bankruptcy court, and one day later, she filed an amended MOR
11 disclosing it?

12 A. In the disclosure statement, yes, but let's don't forget
13 this was all revenue that was earned throughout 2012.

14 Q. We'll get to that. I just want to make sure we're clear
15 that this chart is fair to Ms. Miller because --

16 A. But to be clear though, you know, that 288,000 technically
17 should have been disclosed on every MOR all throughout the
18 pendency of the bankruptcy before January 13.

19 Every one of those original MORs technically should have
20 had Collins revenue that was earned as part of the 288.

21 Q. And we'll get to that, and Ms. Miller has already pleaded
22 guilty to failing to disclose on her bankruptcy report.

23 A. Sure.

24 Q. But just to bear with me here and just entertain me with
25 this. If you drop that 288,000 into that December 2012 row,

1 and if you look at the bottom, looks like right now, it's
2 146,000?

3 A. Right.

4 Q. If you drop that 288, that would essentially triple that
5 number, correct?

6 A. Yes, and there was another exhibit that I testified to
7 that talked about post-amended.

8 Q. Just looking at Exhibit 24D, right?

9 A. Yes, sir.

10 Q. I'm going to show you now what I've marked as Defense
11 Exhibit 21. Do you recognize this document?

12 A. Yes.

13 Q. You mentioned earlier this is the second amended monthly
14 operating report for December 2012, correct?

15 A. Yes, sir.

16 Q. And this was filed on October 4, 2013?

17 A. Correct.

18 MR. VERDREAM: I move for the admission of Defense
19 Exhibit 21.

20 MR. MELUCCI: No objection.

21 THE COURT: It is admitted.

22 MR. VERDREAM: Thank you.

23 Q. If you flip back to page 26, it's a little blurry, but can
24 you make out what's on the top of that page? It says, "TAS
25 client trust ledger."

1 A. Sure. This is document 376 filed October 4, 2013, and
2 having dealt with this particular document, this appears to be
3 a ledger that was from the document, those checks, the 288
4 that were deposited to Ms. Miller's bankruptcy attorneys'
5 escrow account.

6 Q. Escrow account; is that right? In fact, there's a whole
7 page of them, correct, right there on page 26?

8 A. Yes, sir.

9 Q. And if you turn to page 27, it gets to -- almost to the
10 bottom, almost a whole other page?

11 A. A lot of checks.

12 Q. A lot of checks. I would represent to you I counted this.
13 I'm not going to ask you to count them. Those are in fact 49
14 checks that we've talked about.

15 A. I'm familiar that all the checks were deposited into their
16 trust account yesterday.

17 Q. And not only are there 49 checks totaling \$288,000,
18 correct?

19 A. This represents the \$288,000.

20 Q. Right. Also on that first page though, if you look about
21 a third of the way down, there's a credit or deposit for
22 \$40,000, correct?

23 A. Yes.

24 Q. And to the left of that, it says "Studio Improvements."

25 A. Right, yes.

1 Q. That one I want to keep in mind, but I want to make sure
2 we highlight it. We'll come back to it.

3 Again, these were all -- all these checks were deposited
4 on January 7, 2013?

5 A. Correct.

6 Q. Now, the government subpoenaed and you received some
7 payroll records from PES, which I believe is Collins Avenue's
8 payroll company?

9 A. One of them, yes. There were several throughout that
10 Collins used for several different shows. PES was one of
11 them.

12 Q. PES was one?

13 A. Correct.

14 Q. Those records that you got from PES, you provided along to
15 us?

16 A. Correct.

17 Q. I'm going to show you what I've marked as Defense Exhibit
18 15.

19 MR. VERDREAM: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, you may.

22 Q. It appears, Agent Langford, you have the redacted copy,
23 which if you're going to look at it on hard copy, you can have
24 this instead of the redacted. I can actually take the
25 redacted back from you.

1 A. Sure thing.

2 Q. Because I don't think it needs to be redacted. I'm sorry.
3 I may have asked this, but do you recognize this document?

4 A. Somewhat familiar with these, yes. These are the employee
5 pay histories for Ms. Miller for the period of January 1 of
6 '12 through December 31 of '12.

7 Q. In fact, it says "Employee Pay History" at the top?

8 A. It does, yes.

9 Q. Top left-hand corner, it says "Abigale Miller."

10 A. Correct.

11 Q. Top left-hand corner, it says period January 1st, 2012 to
12 December 2012?

13 A. Yes.

14 Q. Now, you told the court back in January that those 49
15 checks, they were written either December 20th or December
16 21st they were written?

17 A. They were cut, yes. Created, dated, cut, yes, issued.
18 However you want to describe it.

19 Q. So you'll see here on Defense Exhibit 15, which I'm not
20 sure if it shows how many pages there are, but if you look at
21 start -- if you start with the second row on the first page
22 and if we go all the way back to the first row of the last
23 page, you'll see 48 checks dated either December 20th or
24 December 21st. I'll give you a chance to flip through that
25 now.

1 A. If you want me to verify them I will, but if you don't, I
2 know that there was a number of these checks that were dated
3 December 20th or December 21st.

4 Q. In fact, we have 48 checks, correct?

5 A. Sounds correct.

6 Q. And then the lone 49 check is the \$40,000 we talked about
7 before. Again we'll come back to that.

8 A. \$40,000. Okay.

9 Q. Let's take a look at the first page. If you look at the
10 second row, which is the first check, it says pay date of
11 December 20th, 2012.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes, sir.

15 Q. And then right next to it, it says period July 22nd to
16 July 28, 2012.

17 A. Yes, sir.

18 Q. And then I'll let you flip through the remaining ones as
19 you have them. They're all similar, right? They show either
20 a check dated December 20th or December 21st, and then next to
21 it, there's an actual pay period.

22 A. Yes, sir.

23 Q. Typically -- in fact, always of a different date than the
24 date of the check?

25 A. Correct.

1 MR. VERDREAM: I move for the admission of Defense
2 Exhibit 15, please.

3 MR. MELUCCI: No objection.

4 THE COURT: It's admitted.

5 Q. Now, in addition to this report that we just discussed,
6 and I'll let you look through the whole thing if you still
7 wanted to keep going.

8 A. I'm fine.

9 Q. In addition to the report we just discussed, you also
10 received a spreadsheet listing of checks from one of Collins
11 Avenue's payroll companies, correct?

12 A. We received a lot of records from Collins and payroll
13 company. We also were subpoenaing the banks for the same kind
14 of records so we received a lot of payroll records from
15 several sources.

16 Q. Do you recall receiving a spreadsheet though from PES that
17 listed dates of checks and amounts, reference numbers for
18 Ms. Miller?

19 A. We received a lot of spreadsheets with check dates and
20 documents.

21 Q. I'll show you what I've marked so far as Defense Exhibit
22 14.

23 A. Okay.

24 Q. Now, this is a spreadsheet that you in fact provided to us
25 under the label of PES, and it actually -- the original

1 spreadsheet had a lot more rows and a lot more columns, but
2 what I did here is I isolated it to the checks that were pay
3 date December 20th or December 21st.

4 Do you see that?

5 A. I see that.

6 Q. And in fact, if you look in the left-hand column, the very
7 left-hand column, you'll see there are 48 checks.

8 A. I see that.

9 Q. And the balance of those checks total about 248,000.

10 Do you see that at the bottom?

11 A. I see that, yes, sir.

12 Q. And then there's the 40,000 which we've already referenced
13 which relates to studio improvement, so we have another check
14 there, the 49th check for 40,000, and if we can flip to the
15 next page of that exhibit, you get the 288,000 in checks.

16 A. I see it there.

17 Q. Do you see that?

18 A. Yes, sir.

19 Q. Now, I also added, using the prior exhibit which we marked
20 as Defense Exhibit 15, using that, if you look back up to the
21 next page, please.

22 Using that, I put in the workweeks for each check, and I
23 can show you in case it's not so clear on your screen because
24 it's slightly blurry on mine, I can show you what we have
25 here.

1 MR. VERDREAM: May I approach again, Your Honor?

2 THE COURT: Yes, you may.

3 Q. If that's a little clearer for you, Agent Langford, and
4 you can compare those dates, if you would like, to the dates I
5 took from Exhibit 15, but I took those from the paid work
6 periods on Exhibit 15 and listed them to the right.

7 Do you see that?

8 A. I see a check amount in the workweek.

9 THE COURT: Is this a separate exhibit?

10 MR. VERDREAM: Yes, Your Honor.

11 Q. If you would, if you look at the workweek date of November
12 18, 2012. It's, I think, about a third of the way down.

13 A. Okay.

14 Q. That's -- I'm just going to call it approximately 12,500,
15 correct?

16 A. 12,408.

17 Q. I'm going to round it to 12,500.

18 A. Sure. I know which one you're talking about.

19 Q. Right below that, there's one for December 9, 2012.

20 A. I see it.

21 Q. That's for \$8,500. I'm rounding.

22 A. I see it.

23 Q. We add those two together, that's 21 grand, correct?

24 A. Roughly, yes.

25 Q. Roughly 21 grand, approximately. And let's go down toward

1 the bottom where it says October 7, 2012.

2 A. Okay.

3 Q. Let's highlight all the way down to the bottom where it
4 says workweek of December 2nd, 2012. There, we have eight
5 checks for approximately \$4,000.

6 A. I see it.

7 Q. So that would be \$32,000 approximately?

8 A. Yes, sir.

9 Q. So if we took that \$8,000 -- and again, those workweeks
10 for that 32,000 are between October and December 2012,
11 correct?

12 A. I see it, yes.

13 Q. So if we took that 32,000 for those and then the
14 approximately 21,000 above for November and December, that
15 would give us \$53,000, correct?

16 A. I see it, yes.

17 Q. So that would be \$53,000 for work performed either in
18 December of 2012 or within the two months prior to that?

19 A. October, November, December of '12, yes.

20 Q. Correct?

21 A. For the workweeks as listed, correct.

22 Q. So I want to keep that \$53,000 in mind, but I think next
23 we're going to talk about that \$40,000 check.

24 MR. VERDREAM: But before that, I move for the
25 admission of Defense Exhibit 14.

1 MR. MELUCCI: No objection.

2 THE COURT: It's admitted.

3 MR. VERDREAM: May I approach again, Your Honor?

4 THE COURT: Yes, you may.

5 MR. VERDREAM: I'll take that back, Sean, if you
6 don't mind.

7 Q. I'm going to show you what we've marked as Defense Exhibit
8 19. This is a two page document, but do you recognize the
9 first page of the document?

10 A. Yes, sir.

11 Q. And let's start at the bottom. It's a copy of a check
12 from Fly Girls to Reign Dance Productions, correct?

13 A. Yes, sir.

14 Q. Reign Dance Productions is Ms. Miller's company, correct?

15 A. Correct.

16 Q. This is in the amount of \$40,000?

17 A. Yes, sir.

18 Q. If you look at the top right, which looks like the check
19 stub of this first page, it says "Studio Improvements" under
20 "Description," correct?

21 A. Correct.

22 Q. Let's flip to the second page, please. In the top
23 left-hand corner, it says "Authority For Payment."

24 A. Correct.

25 Q. At the bottom, it has Michael Hammond's name printed?

1 A. Yes, sir.

2 Q. And Yuya Su's name printed?

3 A. Yes.

4 Q. It looks like there are two signatures near each one of
5 their names -- one signature near each one of their names?

6 A. Yes, sir.

7 Q. Then let's go back to the middle left of that page.
8 Again, it says "Purpose of Expenditure."

9 Do you see that?

10 A. Correct.

11 Q. And it says "Final payment for studio improvements of
12 initial \$100,000."

13 A. I see it.

14 Q. If we could, please flip back to the first page. Again,
15 this is a copy of a check for \$40,000 and it's dated December
16 27, 2012, correct?

17 A. Yes, sir.

18 MR. VERDREAM: I'd move for the admission of Defense
19 Exhibit 19.

20 MR. MELUCCI: No objection.

21 THE COURT: It is admitted.

22 Q. Now, during your investigation, Agent Langford, you have
23 had a chance to look at some of the contracts in these -- in
24 this case, correct?

25 A. Early on, but I would not say that that was a focus of my

1 investigation, no, but I'm familiar there was contracts, yes.

2 Q. Okay. Let's flip to Government Exhibit 16. Have you seen
3 this document before?

4 A. I know it as an A&E network looks like talent services
5 amendment agreements.

6 Q. It's dated June 14, 2012?

7 A. Yes, sir.

8 Q. And in the re line, it talks about studio refurbishment
9 fee?

10 A. Yes.

11 Q. And then let's go down to the first numbered paragraph
12 where it says No. 1.

13 Do you see that?

14 A. Yes.

15 Q. And the first sentence, you don't have to read. I'm
16 paraphrasing, but it says basically that AETV shall pay
17 \$100,000 to cover studio improvements or improvement for
18 refurbishment costs for Reign Dance Studios?

19 A. I see that.

20 Q. I read that basically correctly?

21 A. Sure.

22 Q. Can you read the second sentence for us?

23 A. "Participant acknowledges that producer shall tender
24 payment of the additional sum on AETV's behalf on or around
25 December 1, 2012."

1 Q. On or around December 1 of 2012, right?

2 A. That's what it says.

3 Q. Ms. Miller was not due -- contractually due this
4 improvement fee until on or around December 1st, 2012?

5 MR. MELUCCI: The only objection I would raise, Your
6 Honor, is he did not author this contract, so the contract
7 speaks for itself.

8 THE COURT: The contract does speak for itself.

9 MR. VERDREAM: Thank you, Your Honor.

10 Q. In fact, though, if we flip back to the prior exhibit
11 which would have been Exhibit 19, Defense Exhibit 19, she in
12 fact received a check for \$40,000 in December of 2012 for
13 studio improvement fee?

14 A. There is a check for 40,000 for studio improvements.

15 Q. And if we can, let's take one more quick look back at
16 Exhibit -- Defense Exhibit 14, please.

17 So, Agent Langford, if you recall a few minutes ago, we
18 talked about \$53,000 in checks dated December 20 or December
19 21st for work done in either October, November or December,
20 correct?

21 A. Paychecks.

22 Q. Paychecks?

23 A. Paychecks, yes, sir.

24 Q. Then we have a \$40,000 payment in December of 2012,
25 correct?

1 A. That we just discussed.

2 Q. That we just discussed, and we read the contract language
3 that said this is due on December 1st, 2012, correct?

4 A. There is a check for 40,000 in December for studio
5 improvements, yes.

6 Q. To be fair to Ms. Miller here, out of the \$288,000 in
7 checks that you referred to as unreported Collins Avenue
8 income, we have at least \$93,000 of it that was either earned
9 within December of 2012 or the prior two months or it related
10 to a studio improvement that a contract said was due in
11 December of 2012?

12 A. Right. I'm glad you said the last part because the
13 paychecks were earned but the 40,000 check was paid in
14 December of '12.

15 Q. It was paid in December of 2012?

16 A. Correct.

17 Q. Along with those checks for the work from October,
18 November, December that we discussed. They were also paid in
19 December of 2012?

20 A. They were earned through October, November December and
21 paid in December, yes.

22 Q. Let's go to what you recently discussed with Mr. Melucci,
23 Government Exhibit 57, please. And I believe you mentioned
24 that this was a payment for \$50,000 for studio improvement
25 fee, correct?

1 A. I read what was issued on the check, yes, for studio
2 improvements, yes, \$50,000.

3 Q. And it was actually dated January of 2013, correct?

4 A. Correct.

5 Q. So to be fair to Ms. Miller, she, at best, received it at
6 the end of January but more likely received it or would have
7 received it sometime in February or shortly thereafter?

8 MR. MELUCCI: Objection, Your Honor. That would call
9 for speculation from the witness.

10 THE COURT: Sustained.

11 MR. VERDREAM: I'll withdraw the question.

12 Q. We do know, though, that that check being cut and dated
13 December 31st, 2013, that's after the second amended plan was
14 filed, correct?

15 A. Which was in December of 2012, correct.

16 Q. The second amended plan. That's January 18, 2013.

17 A. Okay. Yes.

18 Q. And you said evidently that Ms. Miller held that all year
19 long; is that correct?

20 A. I don't know what she did with it all year long. I know
21 that it was cut in January of '13 and it wasn't deposited and
22 negotiated until December 31st.

23 Q. You don't know if she actually received it though after it
24 was cut until any time in approximately December of 2013,
25 correct?

1 MR. MELUCCI: Objection. Again, Your Honor,
2 speculation.

3 Q. Do you know when Ms. Miller received that check?

4 A. I do not.

5 Q. Let's take a look at Government Exhibit 1, please. Do you
6 recognize that document?

7 A. Yes.

8 Q. This is the voluntary petition filed on behalf of
9 Ms. Miller in bankruptcy, correct?

10 A. Correct.

11 Q. And it's dated December 3rd, 2010?

12 A. I can't see it, but I know on the top, yes, December 3rd,
13 2010, doc 1, yes.

14 Q. Let's move to Government Exhibit 1A. And do you recognize
15 this document?

16 A. Summary of schedules, yes.

17 Q. And this was filed on January 3rd, 2011, correct?

18 A. Correct.

19 Q. And at the bottom of it -- or in that chart that you see
20 in the middle of the page, there's a column there for assets,
21 correct?

22 A. There is a column for assets, yes.

23 Q. And at the bottom, it totals \$326,000?

24 A. Yes, roughly.

25 Q. Approximately. And then the next column over is

1 liabilities, correct?

2 A. Yes, sir.

3 Q. That totals approximately \$356,000?

4 A. Correct.

5 Q. There's nothing in the indictment about the voluntary
6 petition being filed -- or, that was marked as Government
7 Exhibit 1, there's nothing in the indictment about that being
8 false, correct?

9 A. Not that I recall, no.

10 Q. And I can show you a copy of the indictment, but you don't
11 recall anything, correct? I can give you the indictment.

12 A. No, no, I don't recall.

13 Q. And then similarly, nothing about schedule 1A --
14 Government Exhibit 1A, anything about that being false in the
15 indictment?

16 A. Not that I recall.

17 Q. Now, if I can, I want to set up a timeline of the plan
18 filings, the plans of reorganization just so we can keep them
19 together. If we can, please go to Government Exhibit 2.

20 Do you recognize this document?

21 A. Chapter 11 plan of reorganization, yes.

22 Q. This is the original plan of reorganization. It was filed
23 on February 24, 2012, correct?

24 A. Yes.

25 Q. And then let's go to Government Exhibit 3, please. This

1 document is the amended plan of reorganization, correct?

2 A. Yes.

3 Q. And this was filed on August 27, 2012, correct?

4 A. Correct.

5 Q. Finally, let's go to Government Exhibit 4, please. This
6 is the second amended plan of reorganization, right?

7 A. Yes, sir.

8 Q. And this was filed on January 18, 2013?

9 A. Yes, sir.

10 Q. So let's now go back to --

11 MR. VERDREAM: And, Your Honor, if I may approach.

12 Q. I'll give you this list just so you have it. I just wrote
13 down the dates of the plans. You may have them memorized by
14 now.

15 A. Thank you.

16 Q. Let's go back to Exhibit 24 -- Government Exhibit 24B,
17 please. Agent Langford, when we first started talking today,
18 we talked about the \$700,000 of unreported income, correct?

19 A. Yes, sir.

20 Q. We said part of that is the approximately 288,000 Collins
21 Avenue checks which we went over.

22 A. That was one of the counts charged, yes.

23 Q. That 288,000 makes up part of that 700,000, correct?

24 A. Yes, it does.

25 Q. Another part of it is this \$387,000 from the four

1 different sources we previously talked about in what is shown
2 here on Exhibit 24B?

3 A. 4 through 7, yes, sir.

4 Q. In counts 4 through 7 of the indictment?

5 A. Yes, sir.

6 Q. Looking again at 24B, we have four columns, right,
7 Showclix, Square, Paypal and Masterclass/merchandise?

8 A. Yes, sir.

9 Q. And as we look at these, at this chart -- you created this
10 chart, correct?

11 A. I did, yes.

12 Q. And this says "Post-Amended monthly operating reports
13 unreported income."

14 A. Correct.

15 Q. And as we look at this, I want to keep in mind those dates
16 of the plans that we've just talked about, but let's go from
17 top to bottom.

18 The first balance that we see is actually in the Showclix
19 column, correct?

20 A. In June of '12, yes.

21 Q. In June of '12. I'm going to round up and that's \$7,000.

22 A. Okay.

23 Q. Sounds good?

24 A. I'll work with it.

25 Q. Okay. That's after the original plan of reorganization

1 was filed?

2 A. On February 24th.

3 Q. On February 24th, and then we have no activity in any of
4 the accounts, right, until after the amended plan of
5 reorganization was filed in August of 2012.

6 A. Right. There was the unreported income was -- there was
7 no unreported income from July of '12, August, September, from
8 those four categories.

9 Q. Thank you for clarifying.

10 A. Yes.

11 Q. And again, the amended plan of reorganization, that was
12 filed August 27, 2012, correct?

13 A. Correct.

14 Q. And then for these four accounts, we have no activity or
15 no unreported income for September of 2012, correct?

16 A. For Showclix, Square, PayPal and Masterclass.

17 Q. So that's correct, right?

18 A. Yes, correct.

19 Q. Just quickly, let's jump to Government Exhibit 29, and
20 you discussed this e-mail back in January in the sentencing,
21 and if you read, this is an e-mail from Ms. Miller, right, to
22 Kathy McFaden?

23 A. Correct.

24 Q. And it's dated September 27, 2012, correct?

25 A. Yes, sir.

1 Q. And the first sentence, after the word says "Whoa Guys,"
2 it says, "I am almost out of bankruptcy," correct?

3 A. Correct.

4 Q. And again, that's September 27, 2012?

5 A. Right.

6 Q. Let's look back now to Exhibit 24B, please. Now, we know
7 after the second amended plan -- or the first amended plan was
8 filed August of 2012, and after this e-mail from Ms. Miller
9 saying I'm almost out of bankruptcy in September of 2012, we
10 have some activity in October, November, and December of 2012,
11 correct?

12 A. Correct.

13 Q. And when I say "activity," we have reported/unreported
14 income on this chart?

15 A. For Paypal and her Masterclass events.

16 Q. Just for Paypal and for the Masterclasses?

17 A. Correct.

18 Q. And there are six numbers there, correct? An unreported
19 amount for one each, October, November, December, one for
20 Paypal and one for Masterclass, right?

21 A. Right.

22 Q. And if we look at those six numbers, I'm just going to
23 round to the nearest thousand and we'll try to estimate what
24 this totals. So I'm looking at 4,000 plus 6,000 plus 3,000
25 plus 8,000 plus 17,000; is that correct?

1 A. Sure.

2 Q. Rounding, and that gives me about \$38,000 approximately?

3 A. Correct.

4 Q. And then -- just so we know, that's \$38,000 after the
5 second amended plan was -- after the amended plan was filed
6 and after that e-mail that we just saw from Ms. Miller.

7 And then we know, based on our discussion a few minutes
8 ago, that the second amended plan of reorganization was filed
9 in January of 2013, correct?

10 A. Correct.

11 Q. So prior to that, we have approximately 38 grand, \$38,000
12 which was after the amended plan, and then we have \$7,000
13 which was after the original plan, correct, as we look at 24B?

14 A. Say that one more time.

15 Q. Sure. We have \$7,000 after the original plan was filed in
16 February 2012, right?

17 A. Right.

18 Q. And then we talked about those six numbers equaling
19 \$38,000 that were filed before the end of 2012 but after the
20 amended plan. \$38,000, correct?

21 A. Right.

22 Q. That's \$45,000, correct?

23 A. Okay.

24 Q. Approximately?

25 A. Okay, yes.

1 Q. You're agreeing that 7,000 plus 38,000 is \$45,000,
2 correct?

3 A. Yes.

4 Q. After that, we have the second amended plan filed in
5 January of 2013, correct?

6 A. Correct.

7 Q. So the remaining numbers that are on this chart that we
8 haven't talked about yet, that's after the second amended plan
9 of reorganization, correct?

10 A. Right, January '13 through October of '13.

11 Q. Correct. So in order to get -- so we don't have to add
12 all these numbers up here, I just want to take the \$45,000 we
13 talked about before, and we can just subtract that from the
14 \$387,000, correct?

15 A. Okay.

16 Q. Is that correct? We can do that?

17 A. Sure.

18 Q. And in that case, what would that be? 387,000 minus
19 45,000.

20 A. 342.

21 Q. About 342,000 of unreported revenue after the second
22 amended plan was filed, correct?

23 A. Yes.

24 Q. Now, just to be fair, these balances that are shown on
25 here of unreported revenue, these are all gross numbers,

1 correct?

2 A. No.

3 Q. They're net numbers?

4 A. Correct. These are what actually hit the bank accounts or
5 the Paypal accounts.

6 Q. And the Paypal accounts?

7 A. Correct.

8 Q. Let's talk about --

9 A. These are not paychecks. They're not gross less any
10 taxes. This is literally payments received for services that
11 are what they are. There's no gross or net. It is what it is
12 that hit the bank accounts.

13 Q. Let me phrase that in a different way. So for any travel
14 that would be associated with any of this revenue, any travel
15 costs, would they be deducted from these numbers?

16 A. This is purely revenue.

17 Q. Purely revenue?

18 A. Purely revenue.

19 Q. Not a net number?

20 A. Net of expenses?

21 Q. Net of expenses like travel?

22 A. No. This is purely revenue.

23 Q. And then along those same lines, costs of merchandise, is
24 that deducted from these numbers?

25 A. This is purely revenue.

1 Q. That's a no, correct?

2 A. No. That's a no, right. No expenses were factored in
3 creating this. This is purely revenue.

4 Q. You're saying this is unreported income on Ms. Miller's
5 monthly operating reports, correct?

6 A. These were -- correct. These were funds that were
7 deposited into the -- either held in Paypal that was never,
8 ever disclosed to the courts or was deposited in Wells Fargo
9 Bank accounts that did not have the approval, as far as I'm
10 aware of, to open and maintain from roughly the summer/fall
11 2012 and moving forward.

12 Q. Answer my question. This is unreported revenue that
13 wasn't -- that wasn't reported on monthly operating reports,
14 correct?

15 A. Correct.

16 Q. Likewise, any of those expenses that I talked about, those
17 weren't reported on the monthly operating reports either,
18 correct?

19 A. I'm not so confident that they were, but this schedule
20 only shows revenue. We charged her with revenue.

21 Q. You never looked to see if there was any travel associated
22 with any of these amounts that was actually put on a monthly
23 operating report as an expense?

24 A. No, I wouldn't say I never looked. It's just that the
25 schedules showed a lot of the dance studio. It was labeled

1 dance studio in Florida residence on her MORs, classifying the
2 expenses and that were reportedly matched up to the S&T DIP
3 account.

4 Q. Okay. Anything as far as merchandise sales that we have
5 that we've talked about here or Paypal which I think also was
6 used for merchandise, you didn't see any deductions for sales
7 of that merchandise.

8 She had a Tightspot and a -- I forget the other name, the
9 other entity that sold merchandise, correct?

10 A. She had the studio in Pittsburgh that she maintained and
11 sold merchandise and had revenue and had expenses, and those,
12 more than likely, should have been disclosed to the DIP
13 account and on her MORs, yes, so revenues and expenses
14 theoretically should have been disclosed on her MORs.

15 Q. And in fact, the Tightspot I think it was or the ones up
16 here, there were accounts, that Square account that actually
17 did report on to the -- first, it hit the S&T Bank and made it
18 on to the monthly operating reports.

19 A. I did note some instances that there was another Square
20 account that was pointing to the S&T DIP account, yes.

21 Q. And then this Masterclass/merchandise column, I want to
22 talk about that for a little bit. This related to I think you
23 called it a joint venture that Ms. Miller had with Mark
24 McCormick.

25 A. That was part of it, yes.

1 Q. And Mark McCormick took an actual share of the revenue
2 that -- from those merchandise sales, correct?

3 A. Sometimes, yes.

4 Q. Is that deducted out of these numbers?

5 A. Nope. Again, this is purely revenue.

6 Q. Okay.

7 A. When I say "revenue," these were cash deposits into Wells
8 Fargo accounts that were not disclosed. So if on site, she
9 has, say, for example, \$20,000 collected but had to pay people
10 out of it, and from the remainder that was deposited in the
11 account, I don't know.

12 Q. You --

13 A. I'm going off of deposits that went into the bank account.
14 Does that make sense?

15 Q. It does. I understand what you're saying, yes. Thank
16 you.

17 Mr. McCormick's percentage was 45 percent of the revenue,
18 correct?

19 A. I don't recall what his actual percentage was.

20 Q. You met Mr. McCormick? You talked to him?

21 A. I know there was an agreement with a certain percentage,
22 but I don't recall what the number was.

23 Q. You've talked to Mr. McCormick on occasion?

24 A. Yes.

25 Q. How many times have you talked to him?

1 A. Maybe five times over the course of the investigation.

2 Q. And he -- you don't recall him telling you how much his
3 percentage was?

4 A. I recall him telling me. As I'm sitting here today, I
5 don't recall what the percentage was. There was a percentage.
6 There was profit-sharing, yes.

7 Q. Let's take what I've marked as Defense Exhibit 22.

8 A. Yes, sir.

9 Q. Do you recognize this document?

10 A. I saw it last night at 8:30.

11 Q. You've seen it though before that though, correct?

12 A. Actually, I don't recall seeing this particular
13 spreadsheet.

14 Q. You, in fact, received spreadsheets from Mark McCormick?

15 A. I'm not denying that I received spreadsheets. I just did
16 not look at this one.

17 Q. You don't recall ever looking at this one.

18 A. I don't recall when you sent it at 8:30 last night that I
19 saw it, but I have it now and I'll try to answer your
20 questions.

21 Q. So if we can -- I think unfortunately I can't see -- we
22 can't see the tabs or the cell formulas. Can we open that up
23 in Excel? Can you see that, Agent Langford?

24 A. Yes, I do.

25 Q. That's a little bit better. At the bottom of it, in the

1 tab, it says P&L, correct?

2 A. Correct.

3 Q. That's profit and loss?

4 A. Typically, yes.

5 Q. Typically it's profit and loss, right?

6 A. Yes, sir.

7 Q. Then let's look up at what would be cell AA, so it would
8 be row AA and the 4.

9 MR. MELUCCI: Your Honor, the objection I'm going to
10 raise to this exhibit is that Mr. Langford did not create this
11 exhibit. It's from a witness named Mark McCormick.

12 We've talked about Mark, I understand that. I'm a
13 little concerned about Mr. Verdream asking questions about
14 this exhibit unless he's familiar with this exhibit. This is
15 Mr. McCormick's creation, not Mr. Langford.

16 MR. VERDREAM: In fact, it was Mr. McCormick's
17 creation that I received through Agent Langford in discovery
18 that Agent Langford provided.

19 MR. MELUCCI: He didn't create the exhibit so I'm a
20 little concerned that he's not --

21 THE COURT: If he doesn't have an answer, he can just
22 say I don't know or that's not within his realm of knowledge,
23 but if this is an exhibit that came from the government, this
24 is the government's agent that was responsible for the
25 gathering of the document, he will be able to testify to it.

1 MR. MELUCCI: That's fine. Thank you.

2 MR. VERDREAM: Thank you, Your Honor.

3 BY MR. VERDREAM:

4 Q. If we look at cell AA4 and that's AA3, Agent Langford, it
5 actually says Mark, correct?

6 A. Correct.

7 Q. Underneath that, if you could move just the mouse away.
8 It looks like it says \$52,378.88, correct?

9 A. Correct.

10 Q. If you look up at the formula, it says positive AG4 times
11 0.45, correct?

12 A. Yes, I see that.

13 Q. I read that correctly?

14 A. Yes.

15 Q. And let's look over at AG4. That says \$116,379.43,
16 correct?

17 A. Okay, yes.

18 Q. I'm correct?

19 A. Yes.

20 Q. Above that, it says net.

21 A. Yes, it does, yes.

22 Q. So then that number back in cell AA4, that's 45 percent of
23 that net number, correct?

24 A. Yes.

25 Q. Let's go back just briefly back to AB4. The cell right

1 above that says Abby, correct?

2 A. Yes.

3 Q. She similarly has a formula that says AG4 multiplied by 55
4 percent, correct?

5 A. Yes.

6 Q. So that there, between those two, that's a 45/55 split,
7 correct?

8 A. Yes, it appears to be.

9 MR. VERDREAM: I move now for the admission of
10 Government Exhibit -- or Defense Exhibit 22, please.

11 MR. MELUCCI: Well, Your Honor, again, the same
12 objection. Subject to my objection.

13 THE COURT: It will be admitted.

14 MR. VERDREAM: Thank you.

15 Q. You said you talked to Mr. McCormick about five times?

16 A. Yes.

17 Q. Did Mr. McCormick ever tell you that or did he ever
18 describe Ms. Miller as a Mustang sitting idle in a garage?

19 MR. MELUCCI: I'm sorry. I missed that.

20 Q. Did he ever describe Ms. Miller to you as a Mustang
21 sitting idle in a garage?

22 A. I never heard that one, I don't think.

23 Q. He never said that much while she was still in bankruptcy
24 and had these opportunities before?

25 A. I don't recall that.

1 Q. During your investigation, you also had a chance to
2 interview Kathy McFaden?

3 A. Yes.

4 Q. How many times did you speak with Ms. McFaden, if you
5 recall?

6 A. Three or four times, at least.

7 Q. And she was Ms. Miller's accountant, correct?

8 A. Yes.

9 Q. And we've talked about, in some of the files here, about S
10 corporations that were set up for Ms. Miller, correct?

11 A. Correct.

12 Q. And Ms. McFaden actually facilitated that process of
13 setting up the S corporations?

14 A. She was involved, yes.

15 Q. And she actually put -- she actually spoke to attorneys
16 about this process?

17 A. Yes.

18 Q. And connected Ms. Miller with attorneys for this process?

19 A. Yes.

20 Q. And during your times when you talked -- did you talk to
21 Ms. McFaden about these S corporations?

22 A. I'm sure I did.

23 Q. Do you recall her telling you that Ms. Miller wanted to
24 set these S corporations up for tax purposes?

25 A. That was part of it. You could say that, yes.

1 Q. She did say that, correct?

2 A. She wanted payments from Collins to be paid to the S
3 corps.

4 Q. And tax consequences was a reason for setting those up?

5 A. Withholdings, right, withholdings.

6 Q. When you say "withholdings," you mean in a tax sense?

7 A. For individual payroll taxes, yes.

8 Q. Got you.

9 A. I recall Ms. Miller wanting her payments from Collins, her
10 paychecks to be submitted payable to the S corps to avoid the
11 tax consequences, so she would have more money coming to the S
12 corps is what I recall.

13 Q. A tax planning strategy?

14 A. Yeah, but ultimately Ms. McFaden told her that wouldn't
15 work for whatever reasons, workers' comp reasons or whatever.

16 Q. Whether or not it worked, that was the goal?

17 A. Right.

18 Q. Let's look at Government Exhibit 35, please. This is an
19 e-mail from Ms. Miller?

20 A. Yes.

21 Q. This is dated February 15, 2013, correct?

22 A. Correct.

23 Q. This is after that second amended plan of reorganization
24 was filed in January of 2013, correct?

25 A. Correct.

1 Q. And in fact, this was after Judge Agresti called
2 Ms. Miller into court and read her the riot act during the
3 bankruptcy?

4 A. There were several of those, but yes.

5 Q. You do recall one prior to this, to February 2013,
6 correct? If you don't recall, that's fine.

7 A. I don't recall specifically, but there were several
8 instances.

9 Q. Okay. In this e-mail, if you look, I don't even know if I
10 would call it the first or the second or third sentence, it
11 says, "I'm paying everyone I owe 100 percent back in one big
12 check. Who does that? Nobody in bankruptcy."

13 Do you see that?

14 A. I do.

15 Q. Now, did Ms. McFaden ever tell you that she actually heard
16 that same statement made by someone else, by an attorney in a
17 joking manner?

18 A. No, I don't recall that.

19 Q. Ms. McFaden never mentioned that to you?

20 A. No.

21 Q. Let's flip to Government Exhibits -- well, starting with
22 Government Exhibit 35. We know that's after the second
23 amended plan was filed.

24 If we can, just flip to Exhibit 36, and I'm going to flip
25 through each one of these exhibits, Agent Langford. I want to

1 make sure you can confirm these e-mails are after the second
2 amended plan was filed.

3 A. Yes.

4 Q. Exhibit 36 was after?

5 A. Yes.

6 Q. Exhibit 37?

7 A. This top one, yes.

8 Q. And Exhibit 38?

9 A. Yes, March 14, after.

10 Q. Same with Exhibit 39?

11 A. Yes, March 29, after.

12 Q. And Exhibit 40?

13 A. Looks like May 2013. That would be after.

14 Q. 41?

15 A. Yes, May 7, after.

16 Q. 42?

17 A. October of '13, after, yes.

18 Q. And 43?

19 A. Again, October of '13.

20 Q. And then 44, please?

21 A. Looks like October '13, after.

22 Q. That's actually getting pretty close to the actual
23 discharge date in December of 2013, correct?

24 A. Getting close.

25 Q. And then if we can look at the newly admitted exhibits

1 from today. Exhibit 55, please. Again, we recall the second
2 amended plan was filed on January 18, 2013, correct?

3 A. Correct.

4 Q. And this e-mail is from -- top e-mail from Kathy McFaden
5 that's January 22nd, 2013?

6 A. This e-mail is January 22nd of 2013.

7 Q. And then if we can go to Exhibit 56, which is from -- the
8 e-mail we discussed earlier from Jeff Collins, that's March
9 14, 2013, correct?

10 A. Correct.

11 Q. So that's almost two months after the second amended plan
12 was filed, right?

13 A. Right.

14 Q. And then you talked about just today about Exhibits 50
15 through 54 relating to invoices that were paid, I think, by
16 Collins Avenue; is that correct?

17 A. Right, yes, sir.

18 Q. And you said though you weren't really sure how these were
19 treated, whether they were deducted from Ms. Miller's
20 paychecks or not.

21 A. Right. As I'm sitting here today, I don't recall if these
22 were paid out of Collins's bottom line company funds or if
23 these were deducted from any talent fee that she either had
24 earned or future earnings, and there were instances of both.

25 There were several throughout the investigation that we

1 know Collins paid for, but I do know that some of them were
2 deducted from her talent fee, costs and expenditures that they
3 paid.

4 Q. Okay. And you -- do you know if she was 1099ed or given a
5 W2 for any of these?

6 A. I don't know.

7 Q. You don't know. Briefly, if we can, just flip through
8 Exhibit 50. That's a November 2012 e-mail, correct?

9 A. November 15, yes.

10 Q. And 51 is a November 15, 2012 e-mail, correct?

11 A. Yes, sir.

12 Q. And 52, Exhibit 52 is a November 16, 2012 e-mail?

13 A. Yes, sir.

14 Q. And 53 is a December 18, 2012 e-mail, correct?

15 A. Yes.

16 Q. And 54 is the same, December 18, 2012, correct?

17 A. Yes.

18 Q. And so that's November or December 2012. That's three or
19 four months after the amended plan of reorganization was
20 filed, correct?

21 A. Back in August, yes.

22 Q. And then if you remember that e-mail, we can go back to
23 it, from September of 2012 where she says "I am almost out of
24 bankruptcy," correct?

25 A. I do recall the e-mail.

1 Q. So do you recall the date though, September 2012?

2 A. Yes.

3 Q. So those exhibits we just talked about, those are two to
4 three months after that as well, correct?

5 A. These exhibits are after that, yes.

6 Q. Let's take a look at Government Exhibit 22, please. This
7 was a PowerPoint that you put together, correct?

8 A. Correct.

9 Q. And I believe we marked the first page a zero, so page 1,
10 if you flip to the next page, that's actual -- that says "ALM
11 income sources" at the top, correct?

12 A. I see it, yes.

13 Q. And then if you flip to the next page, which would be page
14 2, this is entitled "Disclosed versus undisclosed on original
15 monthly operating reports," correct?

16 A. Yes.

17 Q. And in the left-hand column, you have -- or in the
18 left-hand side under the undisclosed area, you have the Square
19 account, correct?

20 A. Correct.

21 Q. You don't have this in the right-hand column for disclosed
22 on original MORs, correct?

23 A. No. We're talking about the undisclosed, the Square that
24 was set up in Rachael Thoma Dennison's name.

25 Q. There was a Square account that was disclosed on the

1 original MORs?

2 A. Yes, yes.

3 Q. That's correct, right?

4 A. Correct.

5 Q. And those actually, I think, hit the S&T bank account?

6 A. Correct. They were part of the S&T account.

7 Q. Also you have in the left-hand column as undisclosed you
8 have a Showclix identifier there, correct?

9 A. Right.

10 Q. But there was also a Showclix that was disclosed on the
11 original MORs, right?

12 A. Summer recitals and a Canadian trip, if I recall, in the
13 fall of '12.

14 Q. If you can turn to the next page, page 3. Again, this is
15 just to be fair for the presentation for Ms. Miller, you don't
16 have Square or Showclix on the amended MORs, correct? Under
17 the disclosed amended MORs column.

18 A. We are not highlighting the S&T account. That was going
19 towards the Square account. That was going towards the S&T
20 account. We're highlighting the Square, Paypal, Showclix.
21 That was all the Wells Fargo accounts, yes.

22 Q. To be fair, there was a Square and Showclix that were
23 disclosed on the amended monthly operating reports?

24 A. Yes.

25 Q. Let's turn to page 5. I think it would be two pages.

1 This is a chart again you created, correct?

2 A. Right.

3 Q. It says, "Unreported financial accounts to bankruptcy
4 court," correct?

5 A. Right.

6 Q. At the top.

7 A. Right.

8 Q. But if we go down -- I'm going to talk about Showclix and
9 Square. That Showclix with account number 17128 and that
10 Square account with 4281072, those were in fact disclosed to
11 the bankruptcy court, correct?

12 A. Right.

13 Q. Let's turn to --

14 A. Although there were some, if I recall, there were some --
15 for some reason, there were Showclix deposits from this 17128
16 that didn't fully get disclosed on her MORs or amended MORs,
17 if I recall.

18 Q. And can you say that again? I'm sorry. I'm not sure I
19 follow that.

20 A. When I was working up this particular information,
21 comparing Showclix revenue for both Showclix accounts, they
22 didn't fully match up with her amended MORs. It wasn't even
23 really a timing difference. She didn't report all of the
24 Showclix revenue, if I recall --

25 Q. But the Showclix --

1 A. -- from the summer recital account.

2 Q. The Showclix revenue, there was actually -- there are
3 actually identified though -- Showclix revenue was actually
4 identified in the monthly operating report we just talked
5 about?

6 A. For example, I believe in May of '13, the smaller Showclix
7 account 17128, there was only one May ACH deposit for 10,000
8 that was disclosed on the MOR. There were two other May
9 transactions that didn't make it on her MORs.

10 Q. You're recalling this from memory?

11 A. And I'm looking at some reconciliations that I did.

12 Q. Which page is that?

13 A. What page?

14 Q. That you're looking at.

15 A. This would have been the unreported income for May of
16 2013, post-amendment \$34,234.

17 Q. May of 2013?

18 A. '13.

19 Q. After the second amended plan of reorganization was filed?

20 A. You asked me if these were unreported financial accounts
21 and I had to think for a minute. There were some undisclosed
22 Showclix deposits from the 17128 account that was pointing to
23 S&T, but now after my recollection, I believe there was some
24 deposits that weren't fully disclosed.

25 Q. And there were deposits that were fully disclosed?

1 A. Yes, but I thought I made a mistake on this, but for that
2 particular one, I believe it probably could be categorized as
3 unreported financial accounts, just to clarify.

4 Q. Sure, sure. Absolutely. And then if we flip to page 11,
5 this says, "Masterclass cash receipts," correct?

6 A. Yes.

7 Q. And did you put this spreadsheet together?

8 A. No. This was the grand jury production from Showclix.
9 These were the events that were registered on Showclix and
10 that they collected revenue from, so I did not create the
11 spreadsheet, but that's in my PowerPoint.

12 Q. If you look at the right-hand column, these are all dated
13 February 13 or later, correct?

14 A. Correct.

15 Q. And then Ms. Miller didn't even attend all of these events
16 though, correct?

17 A. I don't know which ones she attended.

18 Q. You never asked anyone which ones she attended or which
19 one she didn't?

20 A. I never got to interview her.

21 Q. You interviewed other people that attended these, correct?

22 A. Right, but I don't recall which ones she attended, which
23 ones she didn't, how many she did or didn't.

24 Q. The "For Teachers Only," do you see that? It's back on
25 September 28, 2013.

1 A. Okay.

2 Q. And did anyone ever tell you that that's actually a free
3 event?

4 A. I don't know if it was or not. I was just looking that
5 these were registered events in Showclix.

6 Q. Did anyone ever tell you though?

7 A. No.

8 Q. And similarly for that event, did anyone ever tell you
9 that Ms. Miller paid the expenses for that event?

10 A. I have -- no.

11 MR. VERDREAM: Your Honor, may I have a quick moment?

12 THE COURT: Yes, you may.

13 Q. I'm sorry, Agent Langford, but just to clarify, you
14 testified, right, that you don't know whether or not this is a
15 free event where it says "For Teachers Only"?

16 A. I don't know anything about the event other than what's
17 listed on the slide.

18 Q. Other than it says "For Teachers Only Ask Abby Dessert
19 Dish," correct?

20 A. I read it just like you do.

21 Q. At the top, you have cash receipts though, right?

22 A. Yes. These were for merchandise, Masterclass cash
23 receipts. That includes not only the revenue for the tickets
24 but also merchandise that was sold. I don't know if there's
25 any sold at that particular event or not.

1 Q. That would be the same for --

2 A. Right. I don't know what the charge was, as I'm sitting
3 here. I don't recall or know or if there was merchandise
4 bought there or not.

5 This was just an average. There was 21 shows. There was
6 8,000 in cash, because during the investigation, we were told
7 in many of these events, they charged a fee and she also sold
8 merchandise.

9 Q. And you weren't -- you're not sure if she was even at all
10 of those events?

11 A. I don't know which ones she attended.

12 Q. During the course of your investigation, did you ever hear
13 about any problems with Ms. Miller actually collecting money
14 that was owed to her by Collins Avenue?

15 A. No.

16 Q. Never heard of a payment of \$172,000 that she was owed
17 that Collins Avenue failed to pay for a significant period of
18 time?

19 A. Owed by Collins Avenue?

20 Q. To Ms. Miller.

21 A. No. We heard a lot about money that was owed to
22 Ms. Miller for payroll that she wasn't providing the
23 appropriate paperwork in order to get paid. That's to the
24 extent we heard.

25 Q. Appropriate paperwork?

1 A. For paychecks.

2 Q. S corps?

3 A. Yes, and getting back to the December 21, December 20
4 checks.

5 Q. Right, which we talked about earlier, correct?

6 A. You were asking me about owed payments.

7 Q. Okay.

8 A. It was for her failure to request and do the proper
9 paperwork in order to get paid is the only recollection I have
10 from dealing with Collins.

11 Q. Okay.

12 A. You follow?

13 Q. I do follow.

14 MR. VERDREAM: Thank you. That's all I have. Thank
15 you very much.

16 MR. MELUCCI: Just a couple quick follow-ups to
17 Mr. Verdream's questioning.

18 REDIRECT EXAMINATION

19 BY MR. MELUCCI:

20 Q. Mr. Langford, you were asked questions about the monthly
21 operating reports and many of the monthly operating reports
22 for December of 2012, right?

23 A. Right.

24 Q. You were asked specifically about the \$288,000 in checks
25 that Ms. Miller received in December 2012, dated December

1 2012?

2 A. Correct.

3 Q. Do you recall reviewing those checks that were deposited
4 into the Calaiaro Corbett escrow account in January 2013?

5 A. Yes.

6 Q. There were many of those checks dated throughout the
7 entire calendar year?

8 A. Yes, they were. 2012.

9 Q. So because they were issued in December 2012 doesn't mean
10 she actually earned them on or in December 2012?

11 A. No. These were checks that she would have earned
12 throughout the year for those particular pay periods.

13 Q. And just to clarify Mr. Verdream's examination, the first
14 time that the monthly operating reports disclosed by way of
15 attaching a spreadsheet of those checks totaling \$288,000 was
16 not until October 2013?

17 A. I don't recall if the escrow account was attached to the
18 amended December or if it was the second amended December.

19 Q. Let me show you --

20 MR. MELUCCI: May I approach the witness, Your Honor?

21 THE COURT: Yes, you may.

22 Q. Mr. Verdream marked as Defendant 21 which is the amended
23 December 2012 monthly operating report.

24 Is that the first time you see any statement disclosing
25 those paychecks?

1 A. There were many -- in October of 2013, there were many
2 MORs that were amended to capture previously unreported
3 Collins Avenue.

4 Q. That was just a month or two before the case was
5 discharged?

6 A. Correct. Not only for December 2012 but throughout the
7 pendency of the bankruptcy.

8 Q. Which captured previously unreported income?

9 A. Collins revenue, yes, only.

10 Q. You had indicated towards the end of your
11 cross-examination that, with respect to those \$288,000 in
12 checks, you interviewed the show producer?

13 A. Yes.

14 Q. That was Michael Hammond?

15 A. Correct.

16 Q. One of the assistant show producers, I assume, and you
17 questioned him about those checks?

18 A. Yes.

19 Q. What did he tell you?

20 A. That throughout the year, they were aware that she had not
21 been paid for all these pay periods throughout 2012, and at
22 several points, Hammond was telling me that they were trying
23 to pay her for the income that she was due.

24 And again, as I spoke before, they were relying on her to
25 prepare timesheets and submit the requests for payment to

1 their internal accounting department, and throughout the year,
2 that didn't happen.

3 They wanted to pay her, and at the end of the year, they
4 wanted to close out their books and issue all these checks,
5 which was their explanation of why these checks were payable
6 on December 20th and December 21st to close out their books
7 and pay her the moneys that she earned and had not been paid
8 yet.

9 Q. I'm going to turn your attention to -- can you pull up
10 Government Exhibit 22, and turn to page 1 of 3 of that,
11 please?

12 MR. MELUCCI: Give me a moment, judge.

13 Q. I'm showing you what was marked previously as Government
14 Exhibit 22, which is an e-mail dated September 27, 2012.

15 A. Yes.

16 Q. And that was before the December 2012 series of checks
17 that was sent by the producer to Ms. Miller, right?

18 A. Correct.

19 Q. Would you read that e-mail to the court, please?

20 A. "Whoa, guys! I am almost out of bankruptcy."

21 Q. By the way, who's the e-mail from?

22 A. It's from Ms. Miller to Kathy McFaden copying Brian
23 Raymond.

24 Q. Ms. McFaden is her accountant?

25 A. Right.

1 Q. And Mr. Raymond was her entertainment attorney?

2 A. Correct.

3 Q. Go ahead.

4 A. "Whoa, guys! I am almost out of bankruptcy. Collins
5 Avenue Entertainment, Michael Hammond is holding money at my
6 request. I did receive checks every week during the ultimate
7 competition show. This is how I lived in L.A. all summer
8 long."

9 Q. Thank you.

10 MR. VERDREAM: Greg, I think that's Exhibit 29.

11 MR. MELUCCI: Thank you. You're right.

12 Q. Now, you were asked also about studio refurbishment fee
13 checks. Do you recall that question?

14 A. Yes.

15 Q. And did you discover during your investigation,
16 Mr. Langford, that Ms. Miller was paid by the studio
17 approximately \$100,000 to refurbish her Penn Hills studio?

18 A. Correct.

19 Q. I think they were issued in two separate checks.

20 A. Three checks.

21 Q. Three checks during the pendency of the bankruptcy.

22 A. Yes, sir.

23 Q. Between 2010 and 2013?

24 A. 10,000, 40,000 and \$50,000 is what I understand from my
25 investigation, yes.

1 Q. Did you see any of those checks deposited into the DIP
2 account during the pendency of the bankruptcy?

3 A. The \$40,000 check was deposited into her attorney trust
4 account. The 50,000 check wasn't negotiated until she was out
5 of bankruptcy. The \$10,000 check, I don't recall where it was
6 deposited.

7 Q. You were also asked about a spreadsheet prepared by
8 Mr. McCormick, which was Defendant's Exhibit 22?

9 A. Yes.

10 Q. This is a color coded spreadsheet Mr. Verdream asked you
11 questions about.

12 A. Yes.

13 Q. You got that last evening, correct?

14 A. Correct.

15 Q. You didn't prepare the spreadsheet?

16 A. No, I did not.

17 Q. Did you go ahead and prepare an accounting of the revenue
18 Ms. Miller earned by the color coded description on that
19 spreadsheet?

20 A. Not necessarily an accounting of the revenue earned. I
21 was making some brief notes off of the spreadsheet totaling up
22 some of the particular items.

23 In particular, in the column -- first of all, I spoke to
24 Mr. McCormick last night about this spreadsheet, as I had not
25 seen it before and did not recall seeing it before, and was

1 asking particulars about this particular spreadsheet, and
2 there are a lot of colors and columns and, you know,
3 descriptions.

4 One particular item that is of note is in the credit
5 column -- first of all, this spreadsheet, according to my
6 conversation with Mr. McCormick last night, is an attempt at
7 an accounting of their joint venture for Abby Lee Apparel,
8 which involved the Wells Fargo account 7083.

9 This spreadsheet starts September 21 of 2012, and the
10 first line item is an initial Abby deposit of \$10,000. I
11 believe that was a Collins check that she opened the account
12 with, and then it progressively moves down the spreadsheet all
13 the way through May of 2014, so it's the fall of '12, all of
14 '13 and part of 2014.

15 The items that are of note that I was asking about, there
16 are columns in the credit column which are highlighted in
17 green, and asking Mr. McCormick what the significance of the
18 green is.

19 He directed me to the column, the description column to
20 the right of those particular numbers, and he described it as
21 being cash earned at Masterclass events.

22 So, for example, if you look at September 28, line item,
23 there's \$1,385 there in green on the credit column. To the
24 very right, it says "Meet and greet in Jackson, Mississippi."

25 I reviewed the spreadsheet last night, and after talking

1 with Mr. McCormick, there are several items that are in green
2 that reference Square. I did not count those. There are
3 items in green that represent checks. I did not count those.

4 I was strictly looking at cash and his explanation of
5 where he got the number and what it means.

6 In 2012, she collected 36,052 in cash according to this
7 spreadsheet.

8 Q. This is the joint venture revenue?

9 A. Yes, sir, the Masterclass events, the apparel. In 2013,
10 she collected \$167,000 in cash revenue and in 2014, it was
11 \$68,000.

12 Q. Where did that money go?

13 A. Mr. McCormick didn't know. He said the vast majority of
14 it, he never saw. It was never deposited to the 7083 account,
15 and he described that often, you know, the joint venture, he
16 was paying a lot of these expenses on his own and using his
17 personal credit card, which is highlighted on his very
18 detailed spreadsheet.

19 The items in yellow were expenses that he paid himself,
20 and he very rarely was getting money from Ms. Miller or seeing
21 some of the revenue for the apparel deposited back into the
22 account.

23 So he could not give me a good answer for where all this
24 cash went, except he didn't see it and it didn't go in the
25 bank.

1 Q. In your investigation, did you see deposits of cash by
2 Ms. Miller into the DIP account that are consistent with
3 36,000 in 2012, 167,000 in 2013 and 68,546 in 2014?

4 A. No, sir.

5 MR. MELUCCI: That's all I have, Your Honor.

6 MR. VERDREAM: Just a few follow-up questions, Your
7 Honor.

8 THE COURT: Yes, you may.

9 MR. VERDREAM: I'll be brief.

10 RECROSS-EXAMINATION

11 BY MR. VERDREAM:

12 Q. If we go back to Defense Exhibit 14. Again that actually
13 has the workweeks and when that work was performed, correct?

14 A. It's listed there, yes.

15 Q. And then could we pull up Defense Exhibit 22, please? So
16 you talked about this spreadsheet with Mr. McCormick last
17 night, correct?

18 A. I did.

19 Q. Did he attend all these Masterclass events?

20 A. He attended a few.

21 Q. Did he attend all of them?

22 A. No, he didn't attend all of them.

23 Q. Did he tell you which ones he attended and which ones he
24 didn't?

25 A. No.

1 Q. As we look at that, at these numbers -- actually, could we
2 pull it up on the spreadsheet? You were talking about the
3 green numbers, correct?

4 A. Right, in the credit column.

5 Q. Can you click on the first green number, please? 1385.
6 That's a hard input number, correct?

7 A. Yes.

8 Q. And did he show you the support for that number?

9 A. I asked him where he got the figure from, and he said that
10 for these events, he was the one that was ordering the
11 apparel. He knew how much it cost. He had the invoices. He
12 knew how many there were. He knew where the shows were.

13 He either was providing them to Ms. Miller before she left
14 or was sending them to the event, and he would communicate
15 with her after the event or someone that was attending the
16 events to help out with the sale of merchandise, whether it
17 was the staff or the moms, and would get an accounting of the
18 inventory left over.

19 I asked him how do you know it was all cash.

20 He says, well, it was told to me it was all cash.

21 Q. Someone else told him and --

22 A. He knew how much went. He knew what the number was left,
23 and he said he was in constant discussions with her about this
24 business, again, because he wasn't getting any money back in
25 return.

1 Q. Did he tell you about all the boxes of merchandise that,
2 if they didn't sell, they just left it on the floor or gave it
3 away?

4 A. He said that there was probably some of that, but again,
5 to the point where -- you know, I could only go off these
6 numbers and what he told us about, that it was cash.

7 But he did say it got so bad toward the end, if you scroll
8 down to the spreadsheet, you'll see some items in blue, where,
9 in 2013, he was ordering and shipping. These items were being
10 sold and he wasn't getting any of the revenue back.

11 Those items in blue actually represents, in order to pay
12 some of the vendors, he was logging into Paypal and paying
13 through Paypal expenses because he wasn't getting any return
14 money back from the merchandise that was sold.

15 Q. Or possibly given away?

16 A. Possibly given away, but this was a joint venture, and it
17 was doing fairly well, and throughout the investigation, my
18 interviews, Ms. Miller was purported to always have cash
19 around and on hand.

20 Q. If we could just scroll down a little bit farther. Keep
21 going, please. Keep scrolling a little bit further. I'm
22 sorry.

23 If we go to the right, please. Back up. I'm sorry. I'll
24 ask you. There are payments on here though to Mr. McCormick,
25 correct, reflected?

1 A. There were transfers from this account to his account so
2 that he could pay his credit card bills that were reflected --
3 the expenses were reflected in yellow where he was purchasing
4 merchandise and paying for these invoices with his credit
5 card.

6 So, yes, there were movements of moneys from his Wells
7 Fargo 7083 account to his personal account so he could pay his
8 bills.

9 Q. Also to pay what he was owed as part of this joint
10 venture?

11 A. He said it was, for the most part, a profitable business
12 and, yes, he was due a percentage.

13 MR. VERDREAM: That's all I have. Thank you, Your
14 Honor.

15 THE COURT: Witness is excused.

16 (Witness excused.)

17 MR. MELUCCI: Your Honor, that's all the evidence the
18 government has in its case in chief.

19 MR. RIDGE: Your Honor, before the government rests,
20 there's something I just want to bring to the court's
21 attention.

22 I think I'm okay on it, but I want to make sure. If
23 you recall, there was an objection to Mr. Wahlquist's
24 testimony at the last hearing and I reserved the right to
25 strike any substantive testimony that Mr. Wahlquist gave.

1 Eventually, the court said we're not going to have
2 testimony from this person as an expert.

3 THE COURT: That is correct.

4 MR. RIDGE: But before you did that, you asked him a
5 couple questions about how he got to those numbers. I don't
6 think I need to move to strike that, but I'm going to just in
7 the interest of belt and suspenders, because I think what the
8 court was doing was trying to establish whether there was a
9 foundation for this testimony.

10 And then when you concluded there wasn't, you decided
11 that that testimony wasn't going to come in, but because we're
12 in a proceeding before the bench, I think I probably need to
13 move to strike before the government rests just so we're clear
14 on that.

15 THE COURT: I think it's important to have a record
16 that there wasn't a foundation and there was a basis for the
17 court not to permit him to give what the court determined was
18 expert testimony.

19 MR. RIDGE: Yes. That's really what I thought, Your
20 Honor. I just wanted to make sure.

21 THE COURT: It's not evidence that the court will
22 consider, but it is part of the record to reflect why the
23 court made a determination that he couldn't be giving certain
24 of the testimony.

25 He was allowed to testify to other matters but not as

1 to what would be, in effect, an appropriate interest rate for
2 the unsecured creditors. That's my recollection of that
3 testimony.

4 MR. RIDGE: Yes. Thank you, Your Honor.

5 THE COURT: That's the expert testimony.

6 MR. RIDGE: That's the clarification I need. Thank
7 you.

8 MR. MELUCCI: Nothing further, Your Honor.

9 THE COURT: Okay. Mr. Ridge, the government is going
10 to rest. This is as to the loss?

11 MR. MELUCCI: Yes. On the issue with respect to --
12 that addresses the government's argument that there is an
13 intended economic harm.

14 THE COURT: That's argument. This is for that
15 aspect?

16 MR. MELUCCI: Yes.

17 MR. RIDGE: Your Honor, government would call David
18 Valencik.

19 MR. MELUCCI: The government would?

20 MR. RIDGE: I'm sorry. Old habits die hard, Your
21 Honor. I'm sorry.

22 Ms. Miller will call David Valencik.

23 THE COURT: Will the witness please come forward,
24 stand in front of the court reporter to be sworn. We'll go
25 until about 12:30.

1 MR. RIDGE: May we come to sidebar, Your Honor?

2 THE COURT: Yes, you may.

3 (At sidebar.)

4 MR. RIDGE: Before Mr. Valencik testifies, he's
5 testified before the grand jury and he's also provided
6 information and he's provided all of that information subject
7 to a court order that Judge Fischer entered about the
8 parameters of the attorney-client privilege.

9 I'm going to reference that today and ask him to make
10 sure to stay within those parameters, but I thought the court
11 should have the order just in case there was a question about,
12 okay, is this something he testified to, is this something
13 that the parties agree is not subject to the attorney-client
14 privilege, or is this something the parties might have a
15 dispute about.

16 THE COURT: All right.

17 MR. RIDGE: We probably need to give you that order.

18 MR. MELUCCI: Essentially, what the government's
19 position was, when Mr. Valencik was called before the grand
20 jury, Your Honor -- of course, we're familiar with the
21 attorney-client privilege.

22 However, with respect to matters that are intended to
23 be public communications, in this instance, Mr. Valencik was
24 Ms. Miller's bankruptcy counsel, so obviously, he filed -- he
25 and his firm filed multiple documents, schedules, reports on

1 her behalf.

2 With respect to those matters, the communications
3 that Ms. Miller provided to him that ultimately became either
4 part of the filed document or the document itself would not be
5 privileged.

6 THE COURT: Okay. That's what he's going to be
7 testifying about?

8 MR. RIDGE: Yes, Your Honor.

9 MR. MELUCCI: We're not going to invade any
10 privilege. We understand.

11 THE COURT: Is this for me?

12 MR. MELUCCI: You may have that, judge.

13 (Witness sworn.)

14 DAVID ZACHARY VALENCIK, a witness herein, having been
15 first duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. RIDGE:

18 Q. Can you state your name for the record, please?

19 A. David Zachary Valencik.

20 Q. And what do you for a living?

21 A. I'm an attorney with the office of Calaiaro & Valencik.

22 Q. Can you describe for the court the nature of your
23 practice?

24 A. Our primary practice is bankruptcy law. We file
25 approximately 30 percent of the Chapter 11s in the whole

1 Western District of Pennsylvania.

2 Q. Do you know how many Chapter 11s are filed in the Western
3 District of Pennsylvania?

4 A. I believe the "Pittsburgh Business Times" said that last
5 year, 31 were filed and we filed ten of them.

6 Q. Have you always worked as a bankruptcy practitioner,
7 Mr. Valencik?

8 A. I have. I've worked for Mr. Calaiaro since I graduated
9 from law school, and I started at Calaiaro & Corbett. And
10 when that firm dissolved, we became Calaiaro & Valencik.

11 Q. When did you graduate from law school?

12 A. I graduated from law school in 2009.

13 Q. When were you admitted to the bar?

14 A. In 2010.

15 Q. Okay. As I understand it, you also worked for a brief
16 period of time before you passed the -- before you graduated
17 from law school for a predecessor firm, right?

18 A. I've worked for Calaiaro & Corbett from the time I
19 graduated from law school, which was about a year before when
20 I passed the bar.

21 Q. Okay. Mr. Calaiaro is the sort of common thread between
22 both of those law firms?

23 A. Right.

24 Q. Now, Mr. Valencik, you have produced testimony and
25 documents to Mr. Melucci concerning Abigale Lee Miller's

1 bankruptcy in the past, correct?

2 A. Correct.

3 Q. You're aware of an order that governs the scope of the
4 testimony and documents you could produce and the testimony
5 you could give, aren't you?

6 A. I am.

7 Q. And you and I have reviewed that order before you
8 testified here, correct?

9 A. Correct.

10 Q. And if anyone asks you a question that exceeds the bounds
11 of the attorney-client privilege or encroaches on that order,
12 would you be kind enough to bring it to the court's attention?

13 A. I will.

14 Q. Mr. Valencik, do you know Abigale Lee Miller?

15 A. I do.

16 Q. How do you know Ms. Miller?

17 A. Ms. Miller came to my office in late 2010, I believe, with
18 financial problems and wanted to discuss filing a bankruptcy.

19 Q. All right. And can you describe for the court the nature
20 of the financial problems that Ms. Miller was encountering
21 when she came to you?

22 A. Sure. When she came to us, the most immediate threat was
23 a tax sale on her property here in Pittsburgh. She was in
24 default of that mortgage. She had not paid the taxes on it,
25 and I believe she was in default on the mortgage of a property

1 that she owned in Florida as well.

2 Q. All right. Now, do you remember which property was
3 subject to the tax sale?

4 A. It was the Pennsylvania property here. It was the dance
5 studio.

6 Q. And was the commencement of the tax sale the precipitating
7 event that brought her to you?

8 A. Yes.

9 MR. RIDGE: May we have Government Exhibit's 2,
10 please? I'm sorry. Actually, I need Government Exhibit 1.

11 Q. Mr. Valencik, I'm showing you what's been marked as
12 Government Exhibit 1 and I'll ask you if you recognize those
13 documents.

14 A. It's blurry, but it looks like it's the petition of
15 Abigale Lee Miller.

16 Q. Did you prepare the petition for bankruptcy filed on
17 behalf of Abigale Lee Miller?

18 A. Either Don Calaiaro or myself would have worked on it and
19 prepared it, yes.

20 Q. Did the other, whoever didn't sign it or execute it, did
21 the other person also work on that petition before it was
22 filed?

23 A. Yes.

24 Q. All right. So you had some hand in filing the petition, I
25 take it?

1 A. Correct.

2 Q. If we can go to 1A, please. Do you recognize 1A?

3 A. Yes.

4 Q. What is 1A?

5 A. 1A is a form that gets generated by the bankruptcy
6 program. When you input the information into these schedules,
7 there's two major programs that you work with, and it
8 generates summaries, and this would have been summaries
9 generated from the information that was put into the
10 schedules.

11 Q. If you'll take a look at 1B, Mr. Valencik. Do you
12 recognize that document?

13 A. Yeah. That is Schedule D which lists the secured
14 creditors on the petition.

15 Q. And the secured debt that was -- that is listed at account
16 No. 2718, do you see that?

17 A. Yes.

18 Q. That's the secured debt for 7123 Saltsburg Road,
19 Pittsburgh, Pennsylvania?

20 A. That's correct.

21 Q. You recognize that to be the dance studio?

22 A. That is.

23 Q. And the value of the property is what?

24 A. The value is listed at \$150,000.

25 Q. And what's the outstanding claim on that property?

1 A. At the time, I would think we believed it was
2 approximately \$96,802.13.

3 Q. What does that tell you about equity in that property?

4 A. It tells us that there was equity in that property.

5 Q. Was Ms. Miller the sole owner of that property?

6 A. She was.

7 Q. Now, let's take a look at Exhibit 2. Mr. Valencik, I'm
8 showing you what's already in evidence as Government Exhibit
9 2, and I'll ask you if you recognize that document?

10 A. I do.

11 Q. And what do you recognize that document to be?

12 A. That is one of our plans of reorganization.

13 Q. Is this the first plan of reorganization that was filed in
14 Abigale Lee Miller's bankruptcy?

15 A. I'm not sure. It says the Chapter 11 plan. I assume that
16 is the first one that was filed.

17 Q. It's dated at the bottom February 24th of 2012.

18 A. I believe that is the first one that was filed.

19 Q. All right. Would you be kind enough to describe for the
20 court the process that you and your firm go through before you
21 prepare a plan of reorganization for a Chapter 11 debtor?

22 A. Sure. When we go through a plan to prepare a plan for a
23 client, it comes from a lot of different areas.

24 One of the areas that we go through is we go through the
25 schedules. That's where we start, because that tells you what

1 the secured creditors are going to be, what taxes might be
2 owed, and from there, we set up classes and we divide the
3 creditors into different classes.

4 In this case, what would happen is we divided the
5 creditors into classes based on each secured claim, the tax
6 claims, her exemption rights and the unsecured creditors.

7 We look at things like the monthly operating report, and
8 we try to determine what percentage would be paid back to
9 unsecured creditors as well as what equity might be in real
10 estate that they might have to pay creditors under a
11 liquidation alternative test.

12 Q. And, Mr. Valencik, can you direct me to where in this plan
13 I might look to determine how a debtor proposes to treat her
14 creditors?

15 A. There's several places. We identify all of the creditors
16 and define them in class 3 -- or I mean, article 3, and then
17 their individual treatment would be in article 8 -- or article
18 7, I apologize.

19 Q. So article 3 of the plan which is on page -- begins on
20 page 8, correct, that designates the classes of creditors; is
21 that right?

22 A. That's correct.

23 Q. And why do you have separate classes of creditors?

24 A. Well, you have to have creditors vote on these plans, and
25 one of the things that we do is we try to put them into a

1 position where we have each class, each secured creditor
2 voting in one class, and their class either votes in favor of
3 the plan or it does not.

4 Now, to confirm a plan, you either have to have all the
5 consensual creditors voting in favor of the plan or you have a
6 cramdown hearing, which is a hearing where you actually try to
7 force the plan on to them, if you have at least one class
8 voting in favor of the plan.

9 Q. Okay. So you designated these classes in article 3?

10 A. Correct.

11 Q. And that's based on the decisions that you made about
12 which creditors should be included in the separate classes?

13 A. Correct. Each class has to be treated -- each creditor in
14 each class has to be treated similarly.

15 Q. All right. So when you put this plan together, it was
16 your purpose -- it was your intention to treat each creditor
17 in each class equally, correct?

18 A. Each class individually has to be -- in other words, if
19 you were to put multiple creditors in one class, they all have
20 to be treated the same.

21 Q. Now, if you turn to the next page, we see that there is
22 PNC Bank that is identified as class 2; is that correct?

23 A. Correct.

24 Q. Is that the secured debt that we talked about earlier that
25 was included on the original petition?

1 A. That is.

2 Q. All right. How did you propose to treat the PNC Bank
3 debt?

4 A. PNC Bank was proposed to take their debt and amortize it
5 over a new period of time with a new interest rate. At the
6 time of the filing, that debt was in default. That would cure
7 the default and allow her to go forward with a new
8 amortization and to continue with those payments.

9 Q. Did you reach agreement with PNC Bank on the terms of that
10 new amortization?

11 A. We did almost right away. Within a few months. They
12 filed a motion for relief from stay and they also had -- they
13 also had a UCC1 filing and a lien on her cash collateral, and
14 they filed a motion to prohibit the use of the cash collateral
15 in the case, which we worked out an agreement to use the cash
16 collateral going forward and to pay them on all of their
17 loans.

18 Q. Is that a direct negotiation between you as bankruptcy
19 counsel and counsel for PNC Bank?

20 A. Yes, that's correct.

21 Q. That negotiation took place for each of these classes?

22 A. That negotiation took place for most of these classes.

23 Are you talking about for this plan or just in general in the
24 case?

25 Q. No, in the original plan.

1 A. In the original plan, we could not get ahold of Chase, and
2 we did not have negotiation with Chase. We just put that --
3 that was what we proposed how to modify them in our plan.

4 Q. Let's take a look at Chase. Chase is identified as class
5 3; is that right?

6 A. That's correct.

7 Q. And what was the interest or what was the nature of
8 Chase's interest?

9 A. Chase had a mortgage on a property in Florida, and they
10 were owed \$245,000 approximately, and what we proposed with
11 them was to cut them down in a 506 action, and we were going
12 to reamortize whatever the value of the collateral was over a
13 new period of time with a new interest rate.

14 Q. So let's make sure I understand, because I don't practice
15 bankruptcy. A 506 action is?

16 A. 506 action is an action under 506 of the bankruptcy code
17 where it allows you to remove a lien down to the value of the
18 collateral.

19 There has to be an adjudication from the court and a
20 bifurcation of that claim and a court order entered. We never
21 got to that point in this plan.

22 Q. Is that process though described somewhere in this plan?

23 A. There is a portion in this plan that says if there's any
24 pending or contemplated litigation, and it does say in there
25 that we do anticipate to file an action under 506 against

1 Chase. If you look at this plan --

2 Q. Would it help if you had the actual plan in front of you?

3 A. Sure.

4 MR. RIDGE: May I, Your Honor?

5 THE COURT: Yes, you may.

6 Q. What I'll ask you to do, Mr. Valencik, is when you find
7 the page that you're testifying from, tell us what page it is
8 so we can call it up.

9 A. Page 12 article 5.

10 Q. So you're referencing section 5.2?

11 A. Yes. "Litigation necessary or possible to consummate the
12 plan." This contemplates an action under part B of that that
13 says there's a determine -- an action to determine the secured
14 status of creditors on 226 Dolcetto Drive in Davenport,
15 Florida.

16 Q. Why would you initiate an action like this with respect to
17 Chase's claim?

18 A. Well, typically, in 2010, what happened a lot of times are
19 there were severely undersecured mortgages where the
20 properties were no longer worth what people had borrowed on
21 them because of the whole mortgage crisis that happened in
22 2008 and 2009.

23 One of the wonderful things that Chapter 11 allows you to
24 do is allows you to bifurcate that claim and cut down the
25 amount that's owed to that secured lender. It cuts their

1 security off with the 506 action, and they can take -- these
2 adjustable rate mortgages could be changed to fixed rate
3 mortgages over time, and it really helped these people.

4 What usually happens is, once that claim is bifurcated and
5 it becomes a secured and unsecured portion, the unsecured
6 portion ends up in the unsecured creditor pool.

7 Q. Is there a provision in this plan that references what
8 happens to that unsecured portion?

9 A. I believe it is in --

10 Q. Would you direct us to that?

11 A. Sure. If you would look at page 11, 3.8 in the general
12 unsecured creditor category.

13 The last paragraph of this says that "This class includes
14 the undersecured portions of any mortgage or judgment holder
15 whose claim is not secured by collateral and whose liens have
16 been avoided by adversary actions."

17 Q. Let's go back to those classes. You might have to direct
18 us to the right page, to those classes of creditors, because
19 you are now in possession of my plan.

20 A. It would be page 9.

21 Q. All right. PNC Bank, do you remember what that credit
22 was?

23 A. Yes. There was, I believe, a promissory note that
24 Ms. Miller had. It began with the amount of \$20,000, and at
25 the time of filing, it was only -- it was down to about 9,500,

1 and that was what was secured by the UCC1 filing that I
2 mentioned earlier. We agreed to pay that in full over time as
3 well.

4 Q. Was that via negotiation with PNC Bank?

5 A. That was part of the overall negotiation with the mortgage
6 and that claim as well.

7 Q. How about the next item, PNC Merchant Services?

8 A. PNC Merchant Services was a class we created because she
9 had a merchant services account with PNC that was attached to
10 one of her businesses, and what we did with the merchant
11 service account is I believe that there was a new machine that
12 she bought during the case, and we paid that amount, the
13 amount for that machine over time during the case.

14 Q. And again, that's a negotiated resolution of that claim?

15 A. It was.

16 Q. That PNC accepted?

17 A. It was.

18 Q. Let's take a look at real estate and priority tax claims.

19 You have tax claims here.

20 A. Correct. Those tax claims, those would be the tax claims
21 of Penn Hills in Allegheny County that were -- the pressure to
22 file the case that there was potential sale of the property,
23 and then the priority claims would be any money that was owed
24 to the PA Department of Revenue, the IRS, if she had any IRS
25 debt, and it looks like the Bureau of Business Trust Fund

1 Taxes had filed a claim.

2 Q. And in your plan of reorganization that was filed on
3 February 24th of 2012, how did you propose to resolve those
4 tax claims?

5 A. Those claims are paid over five years with statutory
6 interest in full.

7 Q. Can we go to the next page, please? Then we have --
8 what's the exemption rights of the debtor?

9 A. So a debtor gets exemption rights in every case where she
10 gets to exempt certain property from the estate. It's
11 essentially untouchable by the creditors once a case is
12 confirmed.

13 Once it is confirmed, it reinvests back into the debtor.
14 We have always created a class to allow for those exemption
15 rights to reinvest back into the debtor. We now changed our
16 plans. We don't put them in a specific class any longer. We
17 put them in article 5, but it does the same purpose.

18 Q. The last item there is the general unsecured creditors.
19 Do you see that?

20 A. Correct.

21 Q. Who was contained in the general unsecured creditors?

22 A. The general unsecured creditors would be any creditor that
23 we listed on our petition or filed a claim that it was not
24 secured by actual collateral.

25 Q. Now, there are times when you can contest unsecured

1 claims, aren't there?

2 A. You can dispute unsecured claims. You can dispute any
3 claim if you don't think it's valid.

4 Q. Were there any disputes of the unsecured claims in this
5 case?

6 A. We listed Ascap, I believe, as disputed but we never filed
7 the claim objection to follow through with it.

8 Q. What was the plan, this plan's proposal to address the
9 unsecured claims?

10 A. This plan proposed to pay the unsecured claims that were
11 filed in the case and that were listed on her petition in full
12 over six years.

13 Q. Okay. Now, one of the things that you do in a plan, in
14 addition to identifying how you're going to deal with the
15 creditors, is you also explain why this plan is viable, don't
16 you?

17 A. Correct.

18 Q. Where do you do that?

19 A. That would be part of the disclosure statement.

20 Q. All right. I think that's Exhibit 2B. I'm sorry. It's
21 2A, Mr. Valencik. Can you direct us in Exhibit 2A to that
22 portion of the plan that explains how this matter will be
23 resolved?

24 A. Well, first off, on the first page, if you look at No. 3,
25 it tells you how the -- what the debtor's employment and

1 business are, and that's what they're going to continue to do.
2 I think it says that. It doesn't say they're going to
3 continue. Give me a moment.

4 Q. Take your time.

5 A. If you look at page 2, part 6, it states the intention of
6 the debtor, and it says, "The debtor will continue to operate
7 her dance studio and intends to reorganize through the profits
8 of the business and income from the reality TV show."

9 Q. All right. Do you know, at the time you put this plan
10 together, how long had that reality TV show been part of
11 Ms. Miller's sort of professional portfolio?

12 A. I don't believe for very long.

13 Q. Did you make any additional references to that reality
14 television show in this disclosure statement?

15 A. I believe so.

16 Q. And would you mind showing us where those are?

17 A. If you would look at page 10.

18 Q. Page 10. All right. And can you tell the court, in
19 addition to what you're describing here, what you proposed to
20 advise creditors of or what you intended to advise creditors
21 of with respect to this reality television program?

22 A. I think that the purpose of this was to tell them that
23 there was a reality TV program. I believe the purpose of this
24 was to say that there would be -- the future of this program
25 was uncertain.

1 We say that there was no contract guaranteeing these
2 payments and she could be eliminated at any time and that any
3 additional seasons of the show will only guarantee the debtor
4 payment for an additional 12 weeks.

5 The problem becomes, in these cases, that they go on for
6 five or six years after you close the case out, so we're
7 worried about payments long into the future, not short term.

8 Q. So that's why you reference the reality television program
9 but don't sort of -- well, strike that.

10 Let me ask the question in a more direct way. How did you
11 approach this reality television program from the point of
12 view of planning for her treatment of creditors over the
13 course of her bankruptcy plan?

14 A. We didn't think it was reliable.

15 Q. And who made that decision?

16 A. It probably was a conversation with everybody together.

17 Q. All right.

18 MR. RIDGE: Your Honor, I'm going to move to the next
19 plan.

20 THE COURT: This would be a good time for us to take
21 a lunch recess. Everyone please rise.

22 (Luncheon recess taken 12:29 p.m.-1:34 p.m.)

23 THE COURT: Will the witness please take the stand?

24 I have to take a hard break for another matter at 2:00.

25 Please be seated.

1 MR. RIDGE: Your Honor, I have to get my client.

2 THE COURT: I did receive two letters written on
3 behalf of the defendant which I don't believe the government
4 will have seen, so I'm going to pass these down and they can
5 be returned. The government can review them and the defense
6 too. They have not seen them.

7 MR. MELUCCI: Thank you.

8 MR. RIDGE: May I, Your Honor?

9 THE COURT: Yes, you may.

10 BY MR. RIDGE:

11 Q. Mr. Valencik, when you prepared the plan of reorganization
12 that we were discussing, the first plan at 2A, did you also
13 prepare, along with the plan, a disclosure statement?

14 A. We did. You must file a disclosure statement with every
15 plan that you file. The documents support in conjunction with
16 each other. You don't get to file one without the other.

17 Q. What's the purpose of a disclosure statement?

18 A. Disclosure statement, a better name for that is a
19 financial statement. It gives you insight into the debtor's
20 financial situation as of the day they were filed.

21 Now, it's a little bit confusing because you also put the
22 proposed plan treatment in there as well, but as for the
23 values of assets and whatnot, it's all about the day it was
24 filed.

25 Q. Can you turn your attention to Exhibit 2A page 3, and

1 specifically item No. 10?

2 A. Okay.

3 MR. RIDGE: Can you bring up item No. 10, Ms. Murphy?

4 Q. Item No. 10 is a question that asks about identifying all
5 executory contracts that are to be assumed or assumed and
6 assigned.

7 Do you see that?

8 A. Yes, I do.

9 Q. And you answered none.

10 Do you see that?

11 A. Correct.

12 Q. Can you explain to the court why you answered none there?
13 What are -- first, what are executory contracts?

14 A. I believe an executory contract is a contract that is to
15 be performed or that has been performed prior to the filing of
16 the case, and here, there were no contracts that existed prior
17 to the filing of the case, so we marked it as none.

18 Q. All right. Now, Mr. Valencik, at the time you prepared
19 and filed this 2-24, 2012 plan of reorganization, did you
20 intend that any of Ms. Miller's creditors would be paid less
21 than the value of their claims?

22 A. Could you reask that question?

23 Q. Sure. At the time you prepared and filed the 2-24-12 plan
24 of reorganization, did you intend that any of Ms. Miller's
25 creditors would be paid less than the value of their claims?

1 A. Well, maybe it's the way you're asking the question.

2 Chase had filed a claim for \$245,000. Our plan did intend to
3 bifurcate that claim into a secured and unsecured portion, so
4 their claim as filed would not have been paid, but they would
5 have been paid in a different way.

6 Q. Was --

7 THE COURT: Before you go any further, did Chase file
8 a claim?

9 THE WITNESS: Chase did file a claim, fully secured
10 claim. There was no unsecured claim filed in the case.

11 THE COURT: They were going to do an 1111(b)
12 election.

13 THE WITNESS: They were actually very difficult to
14 get ahold of, Your Honor. After they objected to our first
15 plan, they kind of went dark on us. They didn't state
16 anything.

17 We wanted to work plans out with them, and we really
18 never got to it until towards the end of the case when a
19 different lawyer took over the case for the firm.

20 THE COURT: Okay.

21 MR. RIDGE: I'm going to touch on that, Your Honor,
22 when we talk about the second plan. All right.

23 BY MR. RIDGE:

24 Q. So whether Chase's debt was paid in a secured portion or
25 in an unsecured portion, your intention was, based on

1 paragraph 3.8, that their secured claim could be converted
2 to -- whatever was undersecured could be converted to an
3 unsecured claim?

4 A. Correct. Could be converted to an unsecured claim. They
5 could have filed an unsecured claim. The plan provided for
6 them to be included as an unsecured claim.

7 Q. Is there a practical and legal reason why you would want
8 these creditors to be paid the full value of their claim in
9 this case?

10 A. Well, she did have equity in her property at the dance
11 studio, and to keep that property, under the code, there's a
12 liquidation alternative test. She had an exemption on it, but
13 we thought that she needed to pay her creditors in full.

14 That's why we always proposed a 100 percent plan to the
15 unsecured creditors, because without that, they could claim
16 that she can't keep that property and we have to liquidate it
17 for the equity.

18 Q. Okay. Now, Mr. Valencik, what was the ultimate fate of
19 this plan of reorganization?

20 A. There were objections that were filed to this plan, one by
21 Chase. I believe one by the U.S. Trustee's Office. I'm not
22 sure if there were others. The fate was that we asked the
23 court for time to propose a new plan.

24 Q. Did you ultimately propose a new plan?

25 A. We did.

1 Q. Do you remember when it was that you proposed a new plan?

2 A. I don't remember the date.

3 Q. If you take a look at what's already been admitted as
4 Government's Exhibit 3, I'll ask you if you recognize that
5 document.

6 A. Yes. It looks like our amended Chapter 11 plan that was
7 filed, looks like, August 27 of 2012.

8 Q. Did you participate in the preparation of that plan?

9 A. I did.

10 Q. I take it that you didn't work alone on that plan? You
11 worked in conjunction with others at your law firm?

12 A. Correct. Mr. Calaiaro and myself.

13 Q. Please describe briefly for the court, Mr. Valencik, how
14 the amended plan differed from the original?

15 A. The major changes of this plan from the first plan came to
16 classes 3, class 5 and class 9.

17 Q. Do you want to give us a page number, Mr. Valencik?

18 A. Sure. You can start with page 20 at 7.3. Prior to filing
19 this plan, we had, after Chase had filed an objection, we had
20 reached out to Chase several times trying to work out some
21 sort of plan treatment with Chase.

22 Chase was very unresponsive, and we had extended, I
23 believe -- I think we extended the time to file this plan
24 several times, and we got to a point where we needed to file
25 the plan because we didn't think the court was going to give

1 us any more time.

2 So after some careful thought, we decided to surrender the
3 property in satisfaction of the debt in hopes to either -- the
4 problem is a creditor needs to vote on these plans, and even
5 if they ignore and don't vote, it's considered a no vote,
6 which will send it to a confirmation hearing and cramdown
7 fight.

8 Our goal was to try to make this so Chase was unimpaired,
9 so they would get their property back and we wouldn't have to
10 deal with them voting because they were not responding to
11 anything we were doing.

12 Q. And can you tell the court how you tried to reach out to
13 Chase?

14 A. I made several phone calls to Chase over a period of
15 months.

16 Q. Was it your intention to, when you tendered back the
17 property to Chase, was that sort of a default proposition
18 because you couldn't get them to respond to you?

19 A. That's correct. My client wanted to keep the property,
20 but we couldn't get them to respond. We couldn't work out
21 plan treatment as we had with PNC, and this is what we
22 proposed to do.

23 Q. And the evidence that your client wanted you to keep the
24 property or wanted to keep the property as part of the plan of
25 reorganization is the original plan where she proposed to keep

1 the property?

2 A. That's correct. She did want to keep the property in the
3 original plan.

4 Q. And by the way, the final plan, the second amended plan,
5 did that call for her to keep the property as well?

6 A. That did call for her to keep the property.

7 Q. All right. Can you take a look at paragraph 5 of -- I'm
8 sorry, article 5, your description of the means for
9 implementation of the plan. That's on page 12.

10 A. Okay.

11 Q. Has that changed from the first plan in February of 2012
12 until the second plan in August of 2012?

13 A. I believe it does.

14 Q. How does it change?

15 A. I believe we add to the end of it that "The debtor is also
16 surrendering the real estate to help reduce expenses and fund
17 the plan reorganization."

18 Q. The sentence before that as well?

19 A. "The debtor believes that she will be able to fund this
20 plan in the future from the combined income of the television
21 show and the operation of her dance studio."

22 Q. And had you made any reference to the income from the
23 television show in the original plan? I'm sorry.

24 Had you made any reference to relying on the income from
25 the television show? And you can feel free to look back at

1 section 5 of Exhibit 2.

2 A. No. I believe what we say in the first plan is the debtor
3 is proposing a plan that can be funded without the volatile
4 income from the show.

5 Q. So the second plan differs how?

6 A. The second plan says that she will be able to fund the
7 plan in the future from a combined income of the TV show and
8 operation of her studio.

9 Q. All right. Mr. Valencik, even though you had filed the
10 plan, this amended plan of reorganization, were you still
11 going to discuss Chase's debt and to enter into some agreement
12 with Chase about reformulating their debt?

13 A. Yes. And that happens quite often in Chapter 11s where we
14 file stipulations prior to confirmation when somebody has the
15 objection to the treatment we've put in the plan.

16 Q. After you filed this plan in August of 2012, do you
17 remember if Chase had any objection?

18 A. I don't believe they did.

19 Q. Did you get any response from Chase?

20 A. We did not. I called both the attorney that filed the
21 objection and the attorney that entered their appearance in
22 the case for Chase.

23 Q. Mr. Valencik, did there come a time when -- by the way,
24 let's take a look at the disclosure statement, 3A, and in
25 particular, paragraph 10. That's on page 3.

1 A. Okay.

2 Q. That again is a question about executory contracts, and
3 your answer at the time is still none?

4 A. Correct.

5 Q. And that's because you understood that there were no
6 executory contracts at the time of the filing of the petition?

7 A. That's correct.

8 Q. All right. Did there come a time -- tell me what happened
9 to this plan of reorganization. What was the status of this
10 plan?

11 A. This plan, I believe, that the disclosure statement was
12 approved, but prior to filing the plan, we filed a new plan, I
13 believe, because of the funds that we received from Ms. Miller
14 in December.

15 I believe this plan was filed in August, and by December,
16 we got those funds and we said we would file a new plan to
17 identify those funds and use them to pay people in full.

18 Q. Could you turn your attention to Government's Exhibit 4?

19 Now, can you explain generally for the court how this plan
20 differed -- by the way, I should go back.

21 With respect to the unsecured creditors and how they were
22 treated under the amended plan, was there a different
23 treatment of the unsecured creditors under the amended plan as
24 opposed to the original plan?

25 A. They were being paid in five years rather than six.

1 Q. Okay. By the way, did any of the unsecured creditors ever
2 file an objection?

3 A. No, I don't believe so.

4 Q. Was there an unsecured creditors committee in this case?

5 A. There was not.

6 Q. Do you know why?

7 A. I don't know why. I mean, the creditors have to get --
8 find lawyers to band together to create a committee. It's not
9 something that we do.

10 Q. Okay. Can you take a look at Exhibit 4? Government's
11 Exhibit 4. I'll ask you if you recognize that document.

12 A. I do.

13 Q. What is that document?

14 A. That looks to be the second amended plan of
15 reorganization.

16 Q. Now, let's take a look at 5.1, I think it is where you
17 describe the means, and can you tell the court how this plan
18 differs from the amended plan that you filed in August of
19 2012?

20 A. As to part 5?

21 Q. Yes, as to part 5.

22 A. In this one, it says, "The debtor will fund this plan from
23 the income from the TV show to pay for the classes 1, 7 and 9
24 in full on the plan effective date. Her future role in these
25 TV reality shows will not impact this plan's feasibility."

1 Q. Okay. And what did you mean by that, her future role in
2 these television shows won't impact the plan's feasibility?

3 A. She was -- had enough money to pay the unsecured creditors
4 and the taxes and people that were proposed to be paid over
5 the next five years in full, so they were no longer going to
6 be paying them over time. She would be paying them in one
7 payment, so they weren't going to affect those creditors any
8 longer.

9 Q. The unsecured creditors were \$43,000, right?

10 A. Yes.

11 Q. The taxes were what? About 37?

12 A. That sounds correct.

13 Q. So she had -- that's roughly about \$80,000?

14 A. Correct.

15 Q. She had \$208,000 more than that that had already been
16 deposited in your escrow account, correct?

17 A. Correct.

18 Q. One of the things that is striking about these three
19 plans, Mr. Valencik, just staying with 5.1 for a minute, much
20 of that language is very similar to the original plan and the
21 amended plan.

22 A. That's true.

23 Q. Can you tell the court why that is?

24 A. It was probably just carried over from another plan, you
25 know. We take the original plan and create a new file with it

1 and change what we need to change for an amended plan.

2 Q. And the other information that's included in the plan, I
3 take it, you continue to resubmit in support of your latest
4 iteration of the plan?

5 A. Correct.

6 Q. By the way, did you get a reaction from Chase to this
7 plan?

8 A. To this plan, the third plan, I believe so. I believe at
9 some point, I don't know if it was 2013 or late 2012, the
10 attorney of record changed and that attorney was responsive.

11 Q. Can you explain a little more detail to the court what the
12 problem was, what you later learned the problem was with
13 Chase's unresponsiveness?

14 A. I found out later that one of the attorneys for that firm
15 left and went to another firm when the other attorney entered
16 his appearance, and I can only assume that the reason she was
17 unresponsive is because she was leaving.

18 Q. I see. So they didn't file a substitution of counsel?

19 A. Did not.

20 Q. And they didn't notify you that new counsel had entered
21 the case?

22 A. Did not.

23 Q. All right. Mr. Valencik, was it your intention with
24 respect to this third plan -- by the way, you were telling us,
25 and I interrupted you, about how you managed to finally get

1 Chase to respond to your proposed plan.

2 A. When the new attorney became involved with Chase, we
3 reached out to them. Actually, we filed this plan and it
4 wasn't until closer to this plan being confirmed that we
5 finally got ahold of Mr. DeNardo from Shapiro & DeNardo, and
6 they agreed that they were fine with this plan treatment and
7 they ended up voting in favor of this plan.

8 Q. You had to file this plan as well before you got a
9 response?

10 A. Correct.

11 Q. And I take it, this plan is designed to pay all of the
12 creditors the value of their claims, the full value of their
13 claims?

14 A. This plan is, yes.

15 Q. Mr. Valencik, what was the date of Ms. Miller's discharge
16 from bankruptcy?

17 A. It was in December of 2013. I don't have the order in
18 front of me with the exact date.

19 Q. All right. Between the dates of the second amended plan
20 and the date of the discharge in bankruptcy, did you actually
21 petition the court to pay the unsecured creditors ahead of the
22 scheduled time?

23 A. I believe we did.

24 Q. And why did you do that?

25 A. We had the money. There was no reason not to pay them.

1 Q. And did the court agree, and were you able to pay the
2 unsecured creditors in advance?

3 A. I believe the court did grant that motion and we did pay
4 them.

5 MR. RIDGE: May I have a moment, Your Honor?

6 Your Honor, I have no further questions for
7 Mr. Valencik.

8 MR. MELUCCI: Do you want me to begin or do you need
9 to break at 2:00?

10 THE COURT: I have to break at 2:00. You can get a
11 start.

12 CROSS-EXAMINATION

13 BY MR. MELUCCI:

14 Q. Good afternoon, Mr. Valencik. We met before. You know
15 I'm Gregory Melucci.

16 A. Good afternoon, Mr. Melucci.

17 Q. Let me ask you some questions to follow up on the exam by
18 Mr. Ridge.

19 You have been practicing in the field of bankruptcy since
20 about 2010?

21 A. Correct.

22 Q. And I think you said the bulk of your practice is
23 bankruptcy law?

24 A. Correct.

25 Q. So I would assume that it's fair to say that you've seen a

1 lot in terms of debtors and creditors and petitions and
2 schedules. You're fairly familiar with a lot of that stuff,
3 correct?

4 A. Correct.

5 Q. I'm sure you heard the expression that bankruptcy is
6 designed to protect the honest but unfortunate debtor.

7 Have you heard that expression?

8 A. I don't believe I've heard that expression.

9 Q. Does it make sense to protect the honest but unfortunate
10 debtor?

11 A. Sure.

12 Q. I mean, I think it's fair to assume that honesty is a
13 hallmark of the bankruptcy practice, right, by a debtor?

14 A. Sure.

15 Q. That honesty in terms of disclosure of assets, honesty in
16 terms of the financial condition of a debtor is extremely
17 important both to the trustee, right?

18 A. Correct.

19 Q. To the court? Bankruptcy judge? The court, correct?

20 A. Correct.

21 Q. And creditors?

22 A. Correct.

23 Q. And there's a consequence when a debtor is not honest,
24 right?

25 A. I believe so, yes.

1 Q. You as -- you're primarily debtor counsel, correct?

2 A. Correct.

3 Q. It's important that, when you represent a debtor, I'm sure
4 your advice to a debtor is you need to provide, whether it be
5 a Chapter 7, correct, or Chapter 11, to provide full
6 information about your financial condition to me so that I
7 can make a fair representation about your condition to the
8 court?

9 A. Correct.

10 Q. And debtors know that, correct?

11 A. We tell them.

12 Q. I assume that that financial condition includes not only
13 your assets, personal assets, correct?

14 A. Correct.

15 Q. But income as well?

16 A. Correct.

17 Q. And there's a consequence when the information that's not
18 given to you isn't accurate? That is, it affects the
19 creditor, right?

20 A. Correct.

21 Q. Because what's happening is the creditor makes a claim of
22 a debt owed by the debtor?

23 A. They do.

24 Q. The debtor represents its debts. The creditor files
25 proofs of claim?

1 A. They don't have to file proofs of claim in Chapter 11, but
2 sometimes they do.

3 Q. But the idea is, whether it be a Chapter 7 or Chapter 11,
4 that somehow you, as bankruptcy counsel, to negotiate between
5 the debtor and creditor counsel to resolve the claim?

6 A. Correct.

7 Q. Whether it be extinguished in a Chapter 7 or reorganized
8 in a Chapter 11?

9 A. Correct.

10 Q. If the information that's contained on schedules filed by
11 the petitioner or the debtor is not accurate, the creditor
12 works at a disadvantage, right?

13 A. I guess you could say that.

14 Q. Well, I mean, it is that, because if they don't know or
15 understand --

16 MR. RIDGE: Objection. Argumentation.

17 MR. MELUCCI: I'm not arguing.

18 MR. RIDGE: The witness just said, "I guess you could
19 say that."

20 THE COURT: Finish the question.

21 MR. MELUCCI: Thank you, Your Honor.

22 Q. So when the creditor doesn't have full knowledge or
23 information about the financial condition of a debtor, that
24 can affect the creditor's bargaining power or bargaining
25 position with the debtor?

1 A. Conceivably, it could.

2 Q. Now, if in fact the debtor is not accurate in the
3 representations about their financial condition, it can have
4 an economic effect on the creditor as well?

5 A. I'm not sure I follow you.

6 Q. If the creditor was owed \$100,000, and the debtor
7 hypothetically has assets to pay the 100,000 but misrepresents
8 in schedules that they do not have the assets to pay 100,000,
9 the creditor is forced maybe to take less on the dollar than
10 they would otherwise have taken had they known the true
11 condition of the debtor's financial statement?

12 A. I guess it depends on the creditor.

13 Q. Well, just generally.

14 A. I don't think it works like that. I mean, when you have a
15 secured claim, they have their claim on that property.

16 Q. I'm not talking about a secured claim. I'm speaking
17 generally about a debt.

18 A. But there's different kinds of debts.

19 Q. Ordinary debt.

20 A. Sir, are you talking about an unsecured claim?

21 Q. Let's say an unsecured claim.

22 A. An unsecured claim, potentially, yes, that could be
23 affected.

24 Q. Because they don't get what they might have obtained had
25 the debtor fully represented their condition?

1 A. The debtor may have paid less than 100 cents on the dollar
2 based on the monthly operating reports.

3 Q. And that causes a harm to the creditor?

4 A. It could, yes. They would get less money.

5 Q. Now --

6 THE COURT: We'll need to take our quick break right
7 now.

8 (Recess taken.)

9 THE COURT: Please be seated. I have received an
10 additional two letters that I will hand over to the
11 government, and if you can share them with the defense.

12 MR. MELUCCI: Thank you, Your Honor.

13 THE COURT: We need to wait for counsel for the
14 defendant.

15 MR. VERDREAM: He just excused himself briefly.
16 He'll be right back.

17 THE COURT: That's okay.

18 BY MR. MELUCCI:

19 Q. So if I recall where I was, I think I was asking you about
20 the impact of concealed assets on creditors, the trustee and
21 the court.

22 A. I believe that's correct. I believe you were asking me
23 about the impact of income on creditors.

24 Q. Okay. So if in fact a plan is approved by a bankruptcy
25 judge, and of course let's assume hypothetically that a debtor

1 has concealed assets. That has an impact too on creditors,
2 right?

3 A. Again, where I'm having a problem is where you say
4 creditors in general, because there's different kind of
5 creditors. A priority creditor has to be paid in full over
6 five years.

7 Q. I understand that. My point is, the effect of that, of a
8 creditor not receiving full payment because a debtor has not
9 made full disclosure of assets, has an economic impact upon
10 the creditor?

11 A. I would think only the unsecured creditor.

12 Q. Only unsecured. Well, if you're a secured creditor who's
13 owed, let's say, as we have in this case, Chase, \$245,000, and
14 a debtor proposes a plan in which they either agree to cram
15 down -- you're familiar with that term?

16 A. Correct.

17 Q. -- or surrender, as it was in the amended plan, the asset,
18 that has an economic impact on the creditor?

19 A. If they were crammed down, they would be paid through the
20 unsecured class. If it's surrendered, they get to sell the
21 property.

22 Q. Assuming they make a profit, but they take the property
23 back?

24 A. They take the property back, and then there's laws they
25 have to comply with of deficiency judgment actions that, if

1 they don't comply with them, then they are deemed satisfied.

2 Q. But the debtor, of course, has an enormous savings because
3 they are excused from paying full debt. In other words,
4 whatever the proof of claim is, if they don't pay the full
5 balance, they get a savings?

6 A. There would be a loss if they didn't comply with those
7 laws.

8 Q. If the creditor didn't comply?

9 A. If the creditor didn't comply with the deficiency judgment
10 laws, under Pennsylvania law, they have to file an action to
11 get a judgment within six months after foreclosure or their
12 debt is deemed satisfied after the sale.

13 Q. Let me ask you about, in your experience as bankruptcy
14 counsel, the ways in which debtors are able to misrepresent
15 the truth of their financial condition to the court.

16 Have you become familiar in your past, Mr. Valencik, with
17 the ways in which debtors do conceal assets from the
18 bankruptcy trustee?

19 MR. RIDGE: Objection. Your Honor, he's a fact
20 witness.

21 THE COURT: Sustained.

22 Q. Well, hiding assets is a way in which creditors can
23 conceal assets.

24 MR. RIDGE: Same objection.

25 THE COURT: Sustained.

1 MR. MELUCCI: I'm not sure I understand. I'm not
2 asking for opinion, Your Honor. I'm just asking him, in his
3 experience as bankruptcy counsel, whether he's familiar with
4 the ways in which --

5 THE COURT: You have to relate it to this case,
6 because he's called as a fact witness on the filings in the
7 underlying bankruptcy.

8 BY MR. MELUCCI:

9 Q. In this case, you're obviously more knowledgeable now,
10 Mr. Valencik, about the condition of Ms. Miller's assets than
11 you were during the time that you and the law firm represented
12 her?

13 A. Correct.

14 Q. You've read the indictment in the case?

15 A. I've read parts of it. I tried to stay out of the media
16 and what's been going on.

17 Q. I understand. You have seen from the allegations in the
18 indictment that she's accused of hiding over \$700,000 in
19 assets.

20 A. I've seen that, yes.

21 Q. If you had known while you represented her that those
22 assets were concealed, would your advice to her have been you
23 need to disclose those assets?

24 MR. RIDGE: Objection, Your Honor.

25 THE COURT: Sustained. This is the attorney-client

1 privilege issue.

2 MR. MELUCCI: I'm speaking hypothetically. I'm not
3 asking for whether he actually did. I'm asking
4 hypothetically.

5 THE COURT: It would still be attorney-client.

6 Q. Did you learn that she concealed assets from creditors?

7 A. During the case?

8 Q. During the pen -- now, have you learned that she concealed
9 assets from creditors?

10 A. From the pleadings that we've seen through this
11 indictment, yes.

12 Q. Did you learn that she was scheming to create subchapter S
13 corporations in order to deposit revenue that she earned
14 during the bankruptcy?

15 A. No.

16 Q. You didn't learn that in any e-mail communications that
17 were shown to you?

18 A. I never learned that she was scheming to hide anything.

19 Q. I'm not saying during the pendency of the bankruptcy, but
20 subsequently now, have you learned that?

21 A. I still don't know if there was scheming. I learned that
22 she did try to start subchapter S corporations.

23 Q. If somebody tried to start a subchapter S corporation like
24 she did in order to deposit revenue, that would have been
25 revenue that should have been disclosed to the bankruptcy

1 court?

2 A. I'm sorry. Can you rephrase your question?

3 Q. If somebody, like in her case, was planning on diverting
4 revenue to another entity, that should have been revenue that
5 would have been disclosed, should have been disclosed to the
6 bankruptcy court?

7 A. It's kind of a compound question. That's why I'm
8 confused. She could start a company and open a business
9 during a Chapter 11.

10 Q. With approval by the court?

11 A. Not necessarily. If it's within the ordinary course of
12 her business, yes. She doesn't have to have it approved by
13 the court. Then any income that she received from that
14 business, any profit, would then need to be reported on to her
15 monthly operating.

16 Q. If the plan was to put money into a corporation so as to
17 avoid disclosure to the court, that would be improper?

18 A. Money due to the debtor?

19 Q. Yes.

20 A. Probably, yes.

21 Q. If somebody is setting up related parties in order to
22 divert revenue, would that be improper?

23 A. It would really depend on the situation. I mean, again,
24 if you're asking hypothetically, I'm not an expert, but I
25 think any time you're trying to -- you're using the terms

1 divert revenue.

2 Again, I don't know if you're talking about diverting from
3 moneys that are owed to the debtor or where you're coming
4 from.

5 Q. Moneys owed to creditors. I'm speaking generally, of
6 course.

7 A. Again, I don't know if you're talking about ordinary
8 income from whatever that partnership is or if you're talking
9 about money that somebody was earning from the operation of
10 their business. That's why I'm confused with your question.

11 Q. Let me just -- I'm trying to make this as plain as
12 possible. If a debtor like Ms. Miller is trying to conceal
13 income by placing it with a third party without disclosing it
14 to the court, reporting it in an MOR, that would be improper?

15 A. When you say "placing," you mean just giving somebody --

16 Q. Yes.

17 A. I would say that's improper, yes.

18 Q. You've learned, I assume now, that Ms. Miller opened bank
19 accounts at Wells Fargo Banks and other entities in order to
20 deposit revenue she earned during the pendency of the
21 bankruptcy.

22 A. That's correct.

23 Q. Accounts you did not know were existence when you
24 represented her?

25 A. Correct.

1 Q. You have seen contracts now that Ms. Miller entered into
2 with a network and with the producer in order to generate
3 revenue from the TV show that you did not see until probably
4 December or January 2013?

5 A. That is correct.

6 Q. You have seen communications now or you were shown
7 communications, such as e-mail communications, in which
8 Ms. Miller was instructing others associates, colleagues, to
9 not put money in the bank.

10 A. I believe I saw one of those e-mails, yes.

11 Q. You've seen an e-mail where Ms. Miller instructed the
12 producer to hold checks until the bankruptcy was over?

13 A. I just saw that today, I believe, yes.

14 Q. If you had known these events when you represented her,
15 Mr. Valencik, I assume you would have -- you would have to
16 determine this to be improper?

17 A. Actions like this, yes, I would have said they were
18 improper.

19 Q. Now, you mentioned when you talked about the plans of
20 reorganization, that the object of the plan is to, when
21 representing a debtor, is to enable her to pay off her debts
22 presumably with the least financial impact to the debtor as
23 possible?

24 A. Well, it's a push and pull, because your duty is to the
25 estate and you're trying to get people paid based on different

1 tests, based on a disposable income test, a liquidation
2 alternative test, and that's for the unsecured creditors
3 obviously.

4 And then you're trying to modify secured debt through what
5 the code allows you to do. It's not necessarily the least
6 impact to the debtor. It's, you know -- it's really a
7 negotiation between all of the creditors and her.

8 Q. But the end is to try to satisfy the debt even if it does
9 cause an economic impact to the creditors?

10 A. Sometimes the result is an economic impact to the
11 creditors. For instance, there are cases where the disposable
12 income test says that they don't have to -- they would have to
13 pay five percent to their unsecured creditors. Those plans
14 get confirmed.

15 Q. Now, let's just talk briefly about the plans that you
16 worked with Ms. Miller on. So I understand, the information
17 that's contained in the plans, that is the disclosure
18 statement, the attachments to the disclosure statement which
19 talk about earned income, projected revenue, you're familiar
20 with those attachments?

21 A. I know what you're talking about, yes.

22 Q. All that information largely, I suppose, comes from the
23 debtor?

24 A. The information on the projections mostly comes from the
25 monthly operating reports, and I believe one of them is even

1 called a historical summary, which comes directly from the
2 monthly operating reports.

3 Q. That is, the debtor counsel doesn't go out and conduct his
4 own due diligence to validate the truth of what's contained in
5 the representations on the schedules?

6 A. No.

7 Q. So when the representations made in the schedule, such as
8 the disclosure statement, about the condition of the debtor
9 and the debtor's ability to pay creditors in the future based
10 on her income or assets, that comes from the debtor?

11 A. Correct.

12 Q. And that is something that's significant, because that's
13 what creditors rely on in trying to determine whether the
14 proposed plan is a feasible plan and whether they believe
15 they're receiving the value for which they had on their claim?

16 A. That is what they receive. They receive the disclosure
17 statement first, and then if the disclosure statement is
18 approved, they do receive the plan after that for voting.

19 Q. Now, one of the representations made throughout the
20 disclosure statements was that Ms. Miller, and I believe you
21 indicated this in your direct examination, that Ms. Miller
22 represented in the disclosure statement that the income
23 projection for the TV show, which at the time was, I believe,
24 her primary source of revenue.

25 A. The television show? When she first came to me, the

1 primary source of revenue was the studio.

2 Q. As the original plan and amended plan were filed, both in
3 February and August of 2012, the debtor, I assume, was
4 increasingly earning revenue from the TV show?

5 A. At some point, the revenue from the TV show was driving
6 the case.

7 Q. That representation -- strike that question.

8 The representation about the volatile nature of that
9 revenue, do you recall that representation in the plan? We
10 can pull it up if necessary.

11 A. I'm trying to look.

12 MR. MELUCCI: Let me have, Ms. Wikert, Exhibit 2A,
13 please. Actually it's Exhibit 2, page 12, section 5.1,
14 please.

15 Q. There is -- you see this language, Mr. Valencik? Article
16 5, "Means for implementation of the plan."

17 A. I see it, yes.

18 Q. There's representation here that there is not -- and I
19 believe it's intended to be there is no contract guaranteeing
20 these payments and the debtor can be eliminated any time with
21 no further payments?

22 A. Yes, that's what it says.

23 Q. Did that information come from the debtor?

24 A. It probably came from the debtor. I can't be sure if it
25 came from the debtor or from one of her employees.

1 Q. But you believe it came from the debtor?

2 A. Or one of her employees, her team.

3 Q. When you filed this plan in February 2012, I assume you
4 never saw any contracts between Ms. Miller and the network or
5 the show producer?

6 A. No.

7 Q. Subsequently, you did become aware of those contracts in
8 December, roughly, of 2012?

9 A. That's correct.

10 Q. And you, the attorney, and Mr. Calaiaro were ordered to
11 produce those contracts to the court immediately in December
12 2012 when the amended plan confirmation hearing was postponed
13 by Judge Agresti?

14 A. That's correct.

15 Q. I think you indicated in direct examination that when you
16 were asked by Mr. Ridge whether you would have produced those,
17 I think your answer was no, we did not view those as
18 produceable because you consider them to be executory
19 contracts.

20 A. I don't believe that's what I said. I believe what he
21 asked was -- he asked questions about executory contracts. I
22 don't think he asked about those specifically.

23 Q. I think your answer was you believe these not to be
24 executory contracts.

25 A. That's my belief. My belief is that executory contracts

1 are contracts that existed prior to filing the case.

2 Q. Judge Agresti believed otherwise, right, and he ordered
3 the production of those?

4 A. Judge Agresti has his own rules and, yes, he ordered them.

5 Q. That's what Judge Agresti ordered?

6 A. Yes. He put in an order he wanted to see them.

7 Q. In your second amended plan filed in January of 2013, you
8 indicated yes to the existence of executory contracts?

9 A. We did do that.

10 Q. If you had seen those contracts during the time Ms. Miller
11 negotiated them, would you have stated the same opinion with
12 respect to the feasibility of the plan and the guaranteeing
13 the income projection for the TV show?

14 A. I think it would have been similar. I think there were
15 still provisions that she could be terminated.

16 Q. But her income projection was high?

17 A. Her income projection was definitely higher, so this would
18 have been similar but different, yes.

19 Q. And you would have disclosed to the court or creditors
20 certainly that, look, she was projected to earn significantly
21 more than what she was reporting on her MOR and the
22 attachments to the disclosure statement?

23 A. Those would have changed, yes.

24 Q. You indicated that, going back to the amended plan, this
25 was the plan that was in existence and pending before the

1 court when Judge Agresti was channel surfing, found additional
2 program, commercial for additional episodes of "Dance Moms" or
3 "Abby's Ultimate Dance Competition," correct?

4 A. Could you restate the question?

5 Q. You saw the -- this was the plan -- the amended plan was
6 the pending plan?

7 A. Correct. The second plan, the amended plan, was the one
8 pending at that time.

9 Q. That was, I believe, filed in August 2012?

10 A. That sounds correct.

11 Q. At that point in time, I believe Ms. Miller had executed
12 about four or five agreements with the network or the producer
13 for upcoming episodes of "Dance Moms" or spinoff or related
14 TV shows?

15 A. I don't know the dates of the execution of the contracts.

16 Q. There were several contracts you saw?

17 A. There were contracts, yeah. They could have been
18 executed.

19 Q. They were immediately produced by the court -- to the
20 court?

21 A. The ones I produced when I got them, yes.

22 Q. Now, at the time when the hearing was canceled, there was
23 a plan in place that proposed to deal with both secured and
24 unsecured debt?

25 A. Correct.

1 Q. And you've talked about that with Mr. Ridge, and I want to
2 ask you a few questions about the proposed plan.

3 The big debt that Ms. Miller had was the secured debt that
4 she owed to Chase Mortgage and to PNC Bank?

5 A. Correct.

6 Q. Let's talk about the Chase mortgage debt for a minute.
7 This plan proposed to surrender the \$245,000 proof of claim
8 that is her home in Florida to Chase Bank?

9 A. Correct.

10 Q. The consequence of that surrender, if the plan had been
11 approved, would have been that she would have saved \$245,000
12 with the surrender of that proof of claim?

13 A. Sure, but she loses an asset also.

14 Q. But she would have saved herself \$245,000?

15 A. I don't necessarily agree with that. She wouldn't have
16 paid \$245,000, but she also would not have the asset that went
17 along with it.

18 Q. No, but she would have been excused from paying the debt
19 on that asset.

20 A. She would not have paid that debt under that plan.

21 Q. The impact of that would have been that Chase Bank would
22 have eaten or accepted a home that was, as you said in your
23 direct examination, probably under water?

24 A. Maybe.

25 Q. The only way they can profit from eating or accepting that

1 property is if they can sell it at a profit for at least
2 \$245,000 declared debt?

3 A. They lend the money. They don't have to profit on it, but
4 to get repaid, they have to sell it, and again, they would
5 have to do a deficiency judgment action or they would be
6 deemed satisfied by operation of law.

7 Q. Not going to deficiency judgment. Let's just -- would
8 still have an economic debt to the creditor?

9 MR. RIDGE: Objection, Your Honor. The witness is
10 trying to answer the question.

11 THE COURT: You'll need to rephrase your question.
12 The witness and you are talking over each other in terms of
13 understanding.

14 Q. All I'm asking is the consequence of surrendering that
15 asset could have created an economic debt to Chase Bank?

16 A. Could have.

17 Q. Also she agreed to -- there was an agreement with respect
18 PNC Mortgage, correct?

19 A. Yes, there was.

20 Q. That is that she was able to -- I'm sorry. Let me go back
21 to -- strike that.

22 There was an agreement -- this was the same for the
23 original plan -- to reduce the PNC mortgage by \$811 per
24 month?

25 A. I don't know the exact numbers but, yes, the plan was to

1 reamortize it over a new period with a new interest rate, and
2 that would lower the amount owed, because she currently at the
3 time owed significantly less than when she borrowed money to,
4 I believe, build the studio.

5 Q. That would have been a cost savings to her, right?

6 A. Well, yeah. That's the purpose of the Chapter 11 plan is
7 to reorganize the debt.

8 Q. And to PNC Bank, they -- again, I'm not asking for
9 complicated accounting or understanding. It's simply that
10 they would have lost a percent of interest on what they had
11 loaned her from the original agreement, because they
12 renegotiated the debt?

13 A. I don't know the answer to that only because we took over
14 a new term and new period. If we extended it longer, possibly
15 not. I don't know.

16 Q. Assuming they had renegotiated a new term that reduced the
17 principal -- reduced the interest rate.

18 A. But if it's for a longer time, they may still end up with
19 more money. I don't know the accounting of it.

20 Q. This was the plan that would have been in effect but for
21 Judge Agresti uncovering the concealment of the assets?

22 A. If he had not rescheduled that hearing, yes, that would be
23 the plan that would have been in effect. Now, whether it
24 would have been confirmed is another story altogether.

25 Q. There were no, at that time, no objections to the amended

1 plan filed in August of 2012, right?

2 A. I believe you're correct.

3 Q. I mean, you were essentially on the eve of a plan
4 confirmation hearing in December of 2012 when Judge Agresti
5 issued the order canceling the hearing, right?

6 A. Yes, but Chase had not voted.

7 Q. Chase had not voted.

8 A. Which is a no vote, which means the plan can't get
9 confirmed.

10 Q. There were no indications up to that point in time that
11 any of the creditors objected to the proposed plan?

12 A. No, I don't believe they had objected, no.

13 Q. Now, when that plan is proposed, the amended plan, have
14 you learned since then that in fact Ms. Miller was beginning
15 to conceal assets and had concealed assets that would have
16 affected the representations about what her financial
17 condition was to those creditors?

18 A. Yes.

19 Q. And certainly, speaking as an attorney, you understand
20 that this would have impacted both PNC and Chase Bank's
21 leverage in negotiating a resolution of that debt?

22 A. I don't necessarily agree with that. We have -- there's
23 lot of cases where we still amortize -- in a Chapter 11, we
24 take them over time. We take the loans over time, no matter
25 what.

1 I would have never advised for her to say pay them in full
2 in one payment, because when you have a loan, I mean, that's
3 part of having a loan.

4 Q. I understand, but Chase Bank and PNC Bank, had they known
5 the full financial condition at the time the amended plan was
6 filed, may have responded differently to whether they would
7 accept the surrender both of the Chase debt and a reamortizing
8 of the PNC debt.

9 A. PNC amortized their debt. We worked out an agreement with
10 PNC within the first three months of the case. We were
11 current under payments with them, and I don't think anything
12 would have changed their position.

13 They were locked in with a court order of what their plan
14 treatment was to be.

15 Q. But Chase's position might have changed?

16 A. Chase wasn't responsive to anything, so I don't know what
17 they would have done.

18 Q. You indicated that the second amended plan, the one that
19 was filed in January of 2013, was filed -- I think your words
20 were -- because some additional funds were suddenly made
21 available by Ms. Miller?

22 A. The second amended plan?

23 Q. Yes.

24 A. Yes.

25 Q. But it was more than just some additional funds. It was

1 \$288,000?

2 A. It was.

3 Q. I believe at this time, you were beginning to learn that
4 maybe Ms. Miller had sources of revenue that were not being
5 disclosed?

6 A. I wouldn't say that.

7 Q. If you knew she did, you certainly would not have allowed
8 her to file a plan?

9 A. Correct.

10 Q. Did you read Judge Agresti's transcript -- by the way,
11 were you at the hearing on February 1st, 2013 where your
12 client and Mr. Calaiaro were in attendance to discuss the
13 sudden revelation about the concealed cash?

14 A. I think I was, but I don't remember, to be perfectly
15 honest.

16 Q. Judge Agresti was fairly upset about this, wasn't he?

17 A. I believe so, yes.

18 Q. And this prompted you to, I assume, contact the producer
19 and other parties to try to figure out the complete source of
20 Ms. Miller's assets?

21 A. It's when we sent the order around, yes, Judge Agresti
22 order.

23 Q. And throughout 2013, there was this pending plan. The
24 second amended plan was still pending until it was approved in
25 December 2013?

1 A. That's correct.

2 Q. Now, that was about 11 months, right?

3 A. Correct.

4 Q. None of the creditors raised objections to that plan?

5 A. I don't believe so.

6 Q. And that plan called for the, again, with the Chase Bank,
7 the reduction of interest from 7.875 percent to a fixed 4
8 percent rate?

9 A. That is correct.

10 Q. Why didn't, if you can tell us, you agree to continue to
11 surrender the property? Why did it vary from the amended plan
12 to the second amended plan?

13 A. Well, she had always wanted to keep the property.

14 Q. But she didn't with the amended plan?

15 A. We didn't know if it was feasible for her to keep it.

16 Q. But now was it because you see that she has additional
17 income, the creditors likely are going to reject, especially
18 with Chase, accepting that home because they know she has
19 additional income which was not -- which was not reported?

20 A. No. I think with the payment of the unsecured creditors
21 and the alleviation of that debt going forward on a monthly
22 basis, we thought it was more feasible for her to keep that
23 property.

24 Q. Now you decided to keep the property? Reamortize the
25 debt?

1 A. Correct.

2 Q. At a lower interest rate?

3 A. Correct.

4 Q. Which is a cost savings to her, of course?

5 A. Correct. We do that in every Chapter 11, because a lot of
6 these interest rates are high when these people get them,
7 variable rates.

8 Q. Has an economic impact to Chase?

9 A. It does.

10 Q. You said you looked at the indictment, and you saw that
11 between February 2013 -- excuse me, January of 2013 when the
12 second amended plan was filed until it was approved in
13 December 2013, Ms. Miller continued to earn income from
14 different sources, correct?

15 A. I learned that later, yes.

16 Q. You learned it later?

17 A. Yes.

18 Q. And I believe the summary charts that have been put into
19 evidence show about 340 some thousand dollars in unreported
20 income?

21 A. I know they show unreported income. I don't know the
22 dollar amounts.

23 Q. This information was not available to Chase, to PNC or to
24 any of the creditors, secured creditors when they agreed to
25 accept those -- the second amended plan in December 2013?

1 A. I don't believe so.

2 Q. With respect to the unsecured creditors, I believe the
3 original plan and the amended plan proposed to pay the
4 unsecured debt over the course of six years from the original
5 plan with no interest?

6 A. That's correct.

7 Q. And then to five years with the amended plan?

8 A. Correct.

9 Q. And then of course with the second amended plan filed in
10 January 2013, to pay in full, right, immediately?

11 A. That's correct.

12 Q. That was prompted because she's got money, I suppose?

13 A. We had the money, yes.

14 Q. You had the money?

15 A. Yeah.

16 Q. In the first two plans, the original and the amended plan,
17 there was no -- there was no consideration to paying interest
18 to those creditors who were owed the money on the unsecured
19 debt. It was without interest?

20 A. Correct. It was always without interest to the unsecured
21 creditors.

22 Q. Those creditors lose the time value of money over five or
23 six years by giving Ms. Miller the opportunity to repay them
24 back on her terms?

25 A. Conceivably, yes.

1 Q. And again, when they agree to that second amended plan,
2 these unsecured creditors did not have the benefit of knowing
3 the actual financial condition of Ms. Miller?

4 A. That's correct.

5 Q. What would the interest rate be typically for unsecured
6 debt?

7 A. There's only been one case in seven years that I paid
8 interest to unsecured creditors.

9 Q. And what was that rate, Mr. Valencik?

10 A. I don't remember off the top of my head.

11 Q. Is 12 percent --

12 A. I don't believe so. I don't believe it would ever be that
13 high.

14 Q. What was the -- the unsecured portion, I know there was
15 some discussion about this in the examination by Mr. Ridge,
16 the unsecured portion of Chase's debt, you had proposed the
17 cramdown, leaving an unsecured balance of about 60 some
18 thousand dollars, I think you had proposed was going to go to
19 the unsecured claims?

20 A. I'm not sure what the dollar amount was, but yes, in the
21 first plan, it says that if we do a cramdown, the unsecured
22 portion, if any, because, again, we don't know what it would
23 end up being, you have to go through a whole trial on the
24 value of this piece of real estate and prove what its value
25 is, but any unsecured portion would have then been captured by

1 the unsecured creditor pool.

2 Q. And would Chase have received that 65,000?

3 A. Yes.

4 Q. Interest free?

5 A. Again, I don't know what the dollar amount was, but yes,
6 whatever that portion was, they would have.

7 Q. Interest free?

8 A. Yes. The plan proposed to pay the unsecured creditors
9 interest free, yes.

10 Q. They would have lost the time value of that debt?

11 A. Yes.

12 Q. Let me ask -- I don't want to play law school professor,
13 but you had testified that you believe an executory contract
14 was a contract that had already been performed or performed
15 prior to the filing of a petition?

16 A. That had been performed prior to or still needed to be
17 performed but was in existence at the time.

18 MR. MELUCCI: I would the court to take judicial
19 notice of what an executory contract is. Under Black's Law
20 Dictionary, it's defined as --

21 MR. RIDGE: Objection. I don't care what Black's Law
22 Dictionary says about this. We're operating under
23 the bankruptcy code.

24 THE COURT: I know what an executory contract is.

25 MR. MELUCCI: Does the court still want to hear what

1 the definition is?

2 THE COURT: It's not what Black's Dictionary says it
3 is. It's what the bankruptcy code says it is, and then you
4 would be better off with one of the bankruptcy treatises that
5 give you a definition.

6 It's not a contract that's been performed. If it's
7 fully performed, it's not executory.

8 THE WITNESS: Thank you, Your Honor.

9 MR. MELUCCI: Let me have a minute, Your Honor, if I
10 may. I think, Your Honor, that's all I have with
11 Mr. Valencik.

12 THE COURT: Mr. Ridge, do you have follow-up?

13 MR. RIDGE: Yes, Your Honor, just a bit.

14 REDIRECT EXAMINATION

15 BY MR. RIDGE:

16 Q. Mr. Valencik, this is going to sound like a potentially
17 silly question. A creditor can only be paid what it's owed,
18 right?

19 A. That's correct.

20 Q. If a creditor gets 100 cents on the dollar, it doesn't
21 matter what's concealed, the creditor is paid?

22 A. I don't know if it doesn't matter what's concealed, but I
23 mean, the creditor, if they get 100 cents on the dollar,
24 they're paid.

25 Q. You're right, and I should have been more careful.

1 If the creditor is paid 100 cents on the dollar, then the
2 creditor's claim is extinguished?

3 A. That's correct.

4 Q. All right. PNC and -- you negotiated the terms of the
5 renegotiated, reamortized debt for PNC, correct?

6 A. That's correct.

7 Q. You did that when?

8 A. I believe it was -- I believe it was in March of '11,
9 which would have been, I think, the first couple of months
10 that we were in the bankruptcy case.

11 Q. And Ms. Miller signed a contract, a participation
12 agreement in April of '11. Do you know that?

13 A. I don't know the date that she signed it.

14 Q. Okay. In all of the successive plans of reorganization
15 that you filed, did you provide notice of those plans to PNC?

16 A. Yes. They would have been served to their attorney.

17 Q. So when you advised PNC of this additional income that was
18 related to the television show, did PNC ever come back and ask
19 to renegotiate?

20 A. No, they did not.

21 Q. And in fact, PNC was entitled to a higher interest rate
22 under the renegotiated terms, right?

23 A. Higher than what?

24 Q. Than the original note.

25 A. I don't remember what the original note was.

1 Q. Okay.

2 A. I believe the renegotiated amount was seven and a half
3 percent.

4 Q. Mr. Melucci asked you about Chase's -- under the
5 likelihood that Chase would have some unsecured claim if they
6 were to cram down, Chase would lose its interest.

7 Do you remember him asking that question?

8 A. Vaguely.

9 Q. Do you remember what the term was on the Chase note?

10 A. I do not actually.

11 Q. Do you know if it was longer than five years?

12 A. I believe it was. I believe it was a standard mortgage
13 for commercial property.

14 Q. And do you remember when she entered into it?

15 A. Unfortunately, I do not.

16 Q. But it was longer than five years?

17 A. I believe it was.

18 Q. And the unsecured claims would have been paid out over
19 what?

20 A. The original plan, six years; the second plan, five
21 years.

22 MR. RIDGE: May I have a moment, Your Honor?

23 Q. Mr. Valencik, as it relates to the Florida home, even the
24 amended plan which calls for you to surrender the collateral,
25 that's the plan filed in August of 2012, that was done -- it

1 was not Ms. Miller's intention to surrender that collateral,
2 was it?

3 A. No. She always wanted to keep it.

4 Q. That was at your recommendation because you weren't sure
5 she could afford it?

6 A. That's correct.

7 MR. RIDGE: I don't have anything further, Your
8 Honor.

9 THE COURT: I think the questioning is over.

10 MR. MELUCCI: I have one redirect, Your Honor.

11 THE COURT: Okay.

12 MR. MELUCCI: If I may. Thank you.

13 RE CROSS EXAMINATION

14 BY MR. MELUCCI:

15 Q. One redirect. Mr. Valencik, when you are negotiating the
16 plans for a debtor, as you did for Ms. Miller, the plan that
17 is proposed that has a cost savings to the debtor, that is, I
18 assume, the intent of the debtor? That is, it's the debtor's
19 plan through the attorney, right?

20 A. They have the final say in what we do, yes.

21 Q. So the debtor, Ms. Miller, would have reviewed these plans
22 before they were submitted by you?

23 A. Well, if we were up against a deadline, not necessarily,
24 but we would have discussed the treatment of the claims.

25 MR. MELUCCI: Thank you, Your Honor. That's all I

1 have.

2 THE COURT: Just a couple questions. There are no
3 exemptions that were at issue in this Chapter 11?

4 THE WITNESS: No, I don't believe so. Nobody
5 objected to any.

6 THE COURT: And how was the value of the Chase
7 property determined?

8 THE WITNESS: The value never was determined, Your
9 Honor.

10 THE COURT: There was a value set forth in the
11 schedules.

12 THE WITNESS: The debtor's value was her opinion.

13 THE COURT: And the projections that were filed with
14 the plan, they always show that she would be able to pay 100
15 cents on the dollar to the unsecured creditors?

16 THE WITNESS: I believe so, Your Honor.

17 THE COURT: And the liquidation value, do you recall
18 that?

19 THE WITNESS: I do, Your Honor.

20 THE COURT: Do you recall how that would have shaped
21 up?

22 THE WITNESS: Well, the liquidation alternative, as
23 you know, it's a form that we have to use with the court, and
24 the problem with that form is that it asks for all of the
25 value of your Chapter 7 estate, and then it asks for the

1 secured debt.

2 And what it doesn't take into consideration is that
3 the secured debt was higher because of the Chase loan, and it
4 basically eliminates the equity from the property in the --
5 the property here in Pittsburgh.

6 So the liquidation alternative turned out to be a
7 zero as well, but if you really -- if somebody really drilled
8 down on it, they might object to it and say, wait, there's
9 still equity in this one piece of real estate.

10 THE COURT: For the unsecured creditors?

11 THE WITNESS: For the unsecured creditors.

12 THE COURT: It would have meant Chase would have to
13 take less than the full amount?

14 THE WITNESS: That's possible, yes.

15 THE COURT: But there's still -- what would be the
16 rough delta at the end; do you recall?

17 THE WITNESS: I believe that there was somewhere
18 between 20 to \$50,000 in equity in that piece of real estate.

19 THE COURT: I'm saying in terms of the difference
20 between the -- what would be the liquidation value for the
21 unsecured creditors?

22 THE WITNESS: I think the liquidation value as filed
23 said it was a zero.

24 THE COURT: That was for \$43,000 worth of debt?

25 THE WITNESS: Right, correct.

1 THE COURT: It maybe also would have paid off all the
2 administrative claims?

3 THE WITNESS: Probably not.

4 THE COURT: Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 MR. MELUCCI: Nothing further.

7 MR. RIDGE: I have nothing, Your Honor.

8 THE COURT: The witness is excused.

9 (Witness excused.)

10 MR. RIDGE: Your Honor, may I have a moment?

11 THE COURT: Yes.

12 MR. RIDGE: Thank you, Your Honor.

13 MR. MELUCCI: Your Honor, I don't have any rebuttal
14 evidence and so we're prepared to proceed as the court wishes.

15 THE COURT: Okay. Just want to take a quick minute
16 with my law clerk.

17 (Discussion off the record.)

18 THE COURT: Would you like to make any argument?
19 I'll start with the government first with respect to the
20 amount of loss.

21 MR. MELUCCI: Yes, Your Honor. Thank you. Your
22 Honor, if you give me a moment.

23 From the outset, Your Honor, on this case, it's been
24 the government's position that there are two controlling cases
25 that would assist this court in determining the loss level of

1 the case.

2 Of course, you know the loss level is determined
3 under 2B1.1. It's been our contention, Your Honor, that the
4 evidence that the government has presented shows by a
5 reasonable preponderance as dictated by the Free court and the
6 Feldman court that clearly Ms. Miller intended to deceive and
7 to cause economic harm to creditors.

8 I'm not talking about an actual loss. I know there's
9 been much discussion about the fact that claims have been paid
10 in full, although the government has disputed some of that in
11 terms of the time value of the money and the fact that some of
12 the secured claims were negotiated at lower interest rates,
13 but the government's position has never been that this is an
14 actual loss case.

15 So when the court looks at how does it determine what
16 the intended loss is, the court has to focus on what evidence
17 was there that showed that Ms. Miller intended to cause an
18 economic harm.

19 The evidence we presented, Your Honor, I think
20 through the trustee, through Mr. Langford, shows by a
21 preponderance of the evidence that she clearly intended to do
22 that.

23 Number one, we've shown that, in fact, throughout the
24 course of the bankruptcy proceeding, Ms. Miller concealed over
25 \$750,000 in income that she earned from multiple sources. She

1 primarily earned income from her status as the featured talent
2 on the "Dance Moms" television show.

3 She earned income from the merchandising and sale of
4 merchandise that she produced in a joint venture with Mark
5 McCormick. She earned substantial revenue, Your Honor, from
6 the Masterclass shows that she was performing both nationwide
7 and overseas, but nationwide she was earning revenue from
8 these Masterclass shows where she could charge significantly
9 high ticket prices for individuals to attend the show, moms
10 and their daughters.

11 That concealment began in 2012 and proceeded through
12 2013 until the plan -- the second amended plan was approved in
13 December 2013.

14 In fact, as we've seen from the evidence, Ms. Miller
15 was scheming to do this as early as the fall of 2012. Not
16 only were the MORs not disclosing television revenue, but in
17 fact, the e-mail chains that we have seen between her and her
18 accountant and other associates of hers show that she had a
19 plan.

20 And the plan was to divert revenue from the income
21 she earned from either the TV show or Masterclass -- in most
22 of the cases, it was Masterclass revenue -- into accounts that
23 she created at Wells Fargo Bank outside of the DIP account
24 which she was directed by the court to deposit all revenue,
25 and the purpose of that is obvious.

1 She did not want the court to know about this
2 additional income. Now, you know, the question -- it begs the
3 question why doesn't a debtor want the court to know. I think
4 the reason is obvious. Because a debtor, whether it's true or
5 not, believes that, by disclosing or revealing income that
6 would be sufficient to satisfy her debts, might be taken by
7 the court.

8 Now, in this case, her stated claims were 365 or
9 \$356,000 based on her petition.

10 But over the course of the two years, 2012-2013,
11 Ms. Miller earned -- concealed over \$750,000 in income.
12 There's a huge incentive to divert that revenue to other
13 sources and not to have the court know about that.

14 So what is the evidence that she intended to cause
15 the economic harm? Number one, she created these accounts at
16 Wells Fargo Bank to funnel, as we've stated in the indictment,
17 to funnel this revenue so the court wouldn't know about it.

18 She entered into agreements with the network and the
19 TV show producer such that none of these agreements were
20 disclosed until Judge Agresti demanded them in his February --
21 I'm sorry, December 2012 order when he uncovered the
22 concealment.

23 She was instructing associates of hers not to deposit
24 money in the bank, and the court may recall that infamous
25 e-mail where she says to her associates and for Showclix

1 income, and this was the income that was primarily designated
2 for the Masterclass shows through the ticket retailer list, do
3 not deposit the money in the bank.

4 And then we have another classic e-mail that this
5 court saw that was in February of 2013. This was about a
6 month after -- I'm sorry, two weeks after the sentencing --
7 not sentencing, but rather the bankruptcy hearing on February
8 1st where Judge Agresti had uncovered the fraud and contacted
9 all parties and brought them into court, and the court was
10 very upset about the concealment.

11 We saw the e-mail in response where Ms. Miller was
12 e-mailing her accountant, Kathy McFaden, and of course makes
13 the profane remark about the judge and says I have to pay 100
14 percent on the dollar in bankruptcy. Who does that? Who does
15 that?

16 If there is any more revealing evidence of somebody's
17 intent not to pay creditors their due, that's it. And it's
18 not just that there's one piece of evidence. There is a
19 series of e-mails and a series of acts by Ms. Miller in which
20 she is designing to hide assets, divert assets, funnel assets
21 and create the subchapter S corporations or the S corporations
22 while we have the plans pending.

23 The fact is that amended plan which was filed in
24 August 2012 and was on the eve of being approved, had it been
25 approved, creditors would never have known about the

1 agreements that she entered into where she was projected to
2 earn significant income, Your Honor, upwards of \$25,000 per
3 show on the TV show, spinoffs, related shows.

4 She became a very successful talent for A&E Network,
5 and she was prized by A&E Network because obviously it had
6 enormous ratings and enormous following, and she was making a
7 lot of money.

8 Yet knowing this, and in the situation that she was
9 in when she filed bankruptcy, and I'm not suggesting and I
10 never have, that at the time she filed a petition in
11 bankruptcy, that was the plan, but as she began to earn money
12 in late 2011 and into 2012, the opportunity was there for her
13 now to change that plan.

14 If there was ever an intent early on to pay creditors
15 in full, that plan changed. That plan changed when she
16 started to earn money in 2012 and then into 2013.

17 That's really all the Free court and the Feldman
18 court asked the court to do, and I was thinking about this the
19 other night, Your Honor, as I'm anticipating this argument.
20 One of the things that the parties have gotten kind of bogged
21 down is kind of conflating loss and economic harm.

22 The instruction by the court in Free that was just
23 handed down last fall and then of course the resentencing
24 occurred a couple months ago was that it was only the burden
25 of the government to show that at some point in time, the

1 debtor intended to cause an economic or pecuniary harm to a
2 creditor.

3 It doesn't demand that the government produce an
4 actual harm, just an intended pecuniary harm. More
5 poignantly, Your Honor, it did not tell the government that it
6 had to show an economic loss. Only an economic harm, because
7 loss and economic harm have parallels but they're not the
8 same.

9 You can cause and intend to cause an economic harm,
10 and in the end not actually cause it because, as in this case,
11 a fraud is uncovered, and then the debtor makes a complete 180
12 and decides to pay everybody in full, as the debtor did in the
13 Michael Free case, which was something that the third circuit
14 noted that would be evidence of somebody's intent to cause
15 pecuniary harm, the sudden revelation of the fraud and then a
16 complete 180 in paying the debt back.

17 So again, the analysis, I believe, by the court is
18 not whether in fact it caused an economic loss as loss is
19 defined under the guidelines, but whether the debtor intended
20 to cause an economic harm.

21 As Your Honor well knows being on the bench all these
22 years, another point is that the success of the scheme, and I
23 emphasize this in my brief, Your Honor, is immaterial to
24 whether a fraud has occurred.

25 In other words, the fact that in the end Ms. Miller's

1 scheme to avoid paying creditors fails because it's uncovered
2 does not mean a fraud has not occurred or that there wasn't
3 intent to cause a fraud.

4 As you know, ordinary third circuit model jury
5 instructions on intent and fraud, there has to be evidence of
6 an intent to commit a fraud, not that the fraud actually
7 occurred.

8 And as you think about it, Your Honor, if in fact the
9 government was stuck in a sense with only being able to prove
10 a harm by showing an actual loss, you know, you can imagine
11 the impunity a debtor might have in filing bankruptcy
12 petitions.

13 In other words, if I'm a debtor and let's say I have
14 hypothetically a million dollars in assets and I owe a quarter
15 million dollars in debt. I want to extinguish the debt, but I
16 don't want to show the million dollars in assets, so I
17 reorganize, I pay the 250 in debt, but I concealed a million
18 dollars.

19 Can the debtor walk away and say, wow, I pulled a
20 fast one? I not only was able to pay off my 250, but because
21 there was no actual harm to creditors, therefore, I walk away
22 scot-free.

23 I don't think that's what the third circuit in -- the
24 sentencing commission had in mind or the Free court or the
25 Feldman court had in mind when they, you know, authored

1 opinions or gave lower courts guidance on how to measure loss.

2 Feldman and Free are the same. There's nothing in
3 Free that's not in Feldman. Feldman and Free both said if the
4 government at any point in time can prove an intended economic
5 harm, not a loss, but an intended economic harm, that is
6 satisfactory.

7 Now, how does the court attach a loss figure to that?
8 Historically there have been two approaches. There has been
9 the categorical approach, which essentially has said, and
10 these are cases out of the eighth circuit, Holthaus, there
11 have been a couple others, which said in cases where there's
12 been no actual economic harm but there is evidence of an
13 intent to cause economic harm given the size of the
14 concealment, the loss is the lesser of the concealed assets or
15 the stated liabilities.

16 That's what the Holthaus opinion says. Feldman
17 discussed it also, but the third circuit never formally
18 adopted that. The third circuit went further --

19 THE COURT: In Free, didn't the court really say to
20 the contrary?

21 MR. MELUCCI: It said in fact if you can prove a
22 loss, a concealment of \$1 million, that's the fraud loss.

23 THE COURT: Where does it say that in Free?

24 MR. MELUCCI: It says it in Feldman.

25 THE COURT: But Feldman -- we've been over this

1 before. It was a very different situation in Feldman because
2 that was a Chapter 7 case.

3 MR. MELUCCI: I understand, but I'm not so sure
4 there's a real distinction in terms of 7 and 11 for purposes
5 of --

6 THE COURT: Free is the most recent statement on
7 this, and the court in Free, I'm trying to find the quote
8 where they really sort of chastise the lower court for
9 reaching to find just the highest possible loss.

10 And they said that, you know, that is not
11 appropriate.

12 MR. MELUCCI: Well, they chastise the lower court
13 only because Judge Hornak, in their opinion, did not formulate
14 specific evidence or show specific evidence in the record of
15 an intent to cause an economic harm. They didn't say that
16 we're discounting Feldman. All they said was we agree with
17 Feldman, Feldman is the precedent, but Judge Hornak, you
18 didn't do what we think you should have done in formulating
19 the reasons why you arrived at a loss level of about
20 \$1 million, because your emphasis was on, rather than economic
21 loss, you were more focused on the harm to the judiciary, the
22 bankruptcy court, by the defendant's mendacity in lying to the
23 court, hiding assets.

24 The court simply said do it again, Judge Hornak, and
25 he did it again back in January, except this time, he was very

1 specific about why he reached the loss level that he did. And
2 he looked at two factors which persuaded him, speaking of
3 Judge Hornak now, why he determined that there was a loss
4 range of 400,000 to \$1 million.

5 Number one, he said this is a massive concealment
6 scheme. Michael Free had weapons and historic World War II
7 guns that were valued over \$1 million that he concealed from
8 the court.

9 Secondly, Judge Hornak determined that there were
10 acts by Michael Free, in the words of Judge Hornak, take no
11 chances to hide those assets, so throughout the evidence that
12 was presented at trial in that case, there was evidence that
13 Michael Free, you know, hid the sale of those guns. In fact,
14 he took some of those guns, sold them and got profit from
15 those guns. He lied to the trustee, lied to the court. Not
16 entirely unlike Ms. Miller.

17 So there were two controlling factors, the size of
18 the concealment and the ways in which he concealed those
19 assets were the motivating reasons for Judge Hornak in
20 determining that there was an intent to cause an economic
21 harm.

22 In Free, there was no actual economic loss. All
23 creditors were paid, but Judge Hornak said, look, I can look
24 at loss one of two ways. He intended to cause an economic
25 harm because the stated liabilities were \$671,000, or I can

1 take how he profited from the resale of those guns as gain,
2 which was close to a million dollars, but as Judge Hornak said
3 in a footnote, he felt confident that the --

4 THE COURT: We're only talking about loss.

5 MR. MELUCCI: I understand, but I'm --

6 THE COURT: We haven't focused at all on any gain.

7 MR. MELUCCI: I understand. I'm telling you what he
8 looked at.

9 THE COURT: I understand, but I can't look at that.
10 That's not what we have here. I'm looking at the Free
11 decision, and on page 321, the court talks about, while it may
12 indeed be appropriate to punish a bankruptcy fraudster more
13 severely when that person conceals assets of greater value,
14 the guidelines seem to indicate that, in the absence of any
15 pecuniary harm to the victim, the mechanism for realizing that
16 goal is an upward departure rather than a more severe loss
17 calculation in the first instance.

18 And the court looks to pecuniary harm, which means
19 harm that is monetary or that is otherwise readily measurable
20 in money. Accordingly, you know, you can't get emotional
21 distress, harmful reputation, et cetera.

22 And intended loss is the pecuniary harm that was
23 intended to result from the offense, and it includes intended
24 pecuniary harm that would have been impossible or unlikely to
25 occur. So the fact that, you know, it was a sting or --

1 MR. MELUCCI: Insurance fraud.

2 THE COURT: Right.

3 -- that still qualifies as an -- there still has to
4 be a pecuniary loss intended to the victim.

5 MR. MELUCCI: Exactly. I don't disagree with that.
6 There has to be evidence.

7 THE COURT: How do you show that in a case like this,
8 when there are, in a worst case scenario in a bankruptcy, the
9 case converts to a Chapter 7 and there's a liquidation, and
10 then the value of the assets held by the estate are available
11 to the creditors to be paid?

12 Here there are assets that are available, and I've
13 run the calculations based on the amended plan which I think
14 is the one that is most pertinent here, and the delta between
15 the assets which were valued at \$295,528 and I don't have
16 any -- no one has taken issue with that valuation, the debts
17 that are there would be \$146,728, and so when you -- that's
18 what the loss would be then.

19 MR. MELUCCI: Again, I'm not disagreeing. What I'm
20 saying, Your Honor --

21 THE COURT: I mean, that's the worst case. That's
22 not even the case that we have here where you have -- it's
23 never converted to a Chapter 11 -- I mean, to a Chapter 7.
24 It's always a Chapter 11 case, and when you look through, as I
25 have done here, if you try to look -- I'm taking the debtor's

1 opinion on the value of her assets. The party you have to
2 focus on is Chase, because in the amended plan, Chase was not
3 going to be paid 100 cents on the principal. Chase was going
4 to be paid -- just was going to be given back the property,
5 which was valued at -- I think it was \$120,000.

6 MR. MELUCCI: 150, I think.

7 THE COURT: I think in that plan, it was --

8 MR. MELUCCI: The principal was \$210,000 and the
9 proof of claim was 245.

10 THE COURT: Right.

11 MR. MELUCCI: But again, I'm not arguing --

12 THE COURT: So what Chase is getting back is property
13 that's valued, and I'm trying to get to that value for Chase.
14 I think it was listed at -- at least in this one, the
15 Davenport, Florida was listed at \$120,000 in value.

16 MR. MELUCCI: That's the Chase property.

17 THE COURT: That's the Chase property. Chase had a
18 debt of 245, so if you say that principal amount of that would
19 have been 210,000 was the principal amount of that, when you
20 take that and you subtract the value that Chase was being
21 given, because you could argue that Chase would have gone out
22 and sold it on the market, that's what Chase would have
23 received, so Chase would have lost, in terms of pecuniary
24 harm -- we're not talking about, well, is it a deficiency or
25 not a deficiency?

1 Those are statutory provisions that deal with how
2 secured creditors who have mortgages on property can look to
3 determine whether there's a deficiency.

4 What I'm looking at here is what's an intended
5 pecuniary harm. What's the intended loss here? If you have
6 210,000 in principal and 120,000 in value, you're looking at
7 about \$90,000 worth of difference there.

8 MR. MELUCCI: Okay. I don't disagree with that, Your
9 Honor, except that --

10 THE COURT: You know, it may be higher than that.

11 MR. MELUCCI: I'm happy to supplement.

12 THE COURT: Unless we know what the value of the
13 principal value was owed to Chase.

14 MR. MELUCCI: The principal value was \$210,000.
15 That's not disputed. That's Exhibit No. 49. So that's not
16 disputed. That's in evidence. The rest were fees and
17 interest that accumulated on the \$210,000.

18 You could use that, Your Honor, as a baseline for
19 what number do we attach if I find that there was an intent to
20 cause an economic harm, but the Free and Feldman courts made
21 it easier. Particularly, the Feldman court said, look, you
22 can look at stated liabilities. You can look at the concealed
23 assets, because you don't have to perform the calculation of
24 what the actual loss is if you believe that the stated
25 liabilities exceed that.

1 THE COURT: How in any kind of rational world would
2 you be able to say the intended loss was \$700,000 in this
3 case?

4 I mean, when you're talking about a situation where
5 there are assets in the estate, and you've not disputed that
6 as the government, that she had these two properties and they
7 were worth a certain amount of money, and they would be going
8 to pay the creditors, and if there was equity in the property
9 for -- of PNC, that would be available for unsecured
10 creditors.

11 And when you look at lumping them all together, even
12 on a liquidation, you get up to 149,000 at most based on those
13 values. So it could never be 700,000, and I don't think a
14 court under the Free decision can just say, oh, you know,
15 there's a million dollars at stake here. There's 700,000.
16 That's so conjectural.

17 I certainly have authority, depending on the
18 egregiousness of the conduct, to depart upward if the court
19 determines it to be appropriate. I don't think, as I
20 initially did, that this case is one where there was no
21 intended loss, because now I clearly better understand how
22 Chase was proposed to be treated, and quite frankly, had Chase
23 gone along with plan No. 2, I have no reason to doubt that the
24 defendant wouldn't have willingly surrendered that property as
25 part of the plan and walked away from the \$90,000 worth of

1 principal that would otherwise have been due.

2 Unfortunately under the guidelines, the court doesn't
3 get to include the interest component.

4 MR. MELUCCI: I understand.

5 THE COURT: That would drive it up really high, and
6 that would be affecting the unsecured creditors.

7 MR. MELUCCI: We've never disputed that also. I'm
8 not asking for \$700,000.

9 THE COURT: I'm constrained by the guidelines and
10 also constrained by what the court has said. I've got to look
11 at what was the intended pecuniary loss to the victims.

12 MR. MELUCCI: The harm.

13 THE COURT: The pecuniary harm which is a money
14 concept, and so I have to look at not what they actually lost.
15 We all agree they didn't lose anything here as far as the
16 guidelines would be concerned, but there is an intended harm,
17 and even though her original plan was going to pay 100 cents
18 on the dollar, it wasn't necessarily going to pay Chase 100
19 cents on the dollar. That was unclear under the plan, even
20 though they said they would have the 506 assessment done, and
21 theoretically that could have resulted in increased claims,
22 but there was also a disclaimer in the plan that was 100 cents
23 on the dollar depending on the size of the claim, so if Chase
24 had dropped down there, who knows what the distribution would
25 be.

1 But it's quite clear in the next plan that Chase was
2 not going to get paid the full amount of the principal. It
3 was the intent to turn over property valued at \$120,000. So
4 that's where I can see, and that's based on the debtor's
5 opinion on what the value of the property was and based on
6 what clearly the plan was saying would be paid, so at a
7 minimum, you're looking at, I think, a \$90,000 loss.

8 MR. MELUCCI: Well, the principal would have been 210
9 on the Chase mortgage.

10 THE COURT: Right. So it's 210 getting property, at
11 best, 120. You're looking at 90,000.

12 MR. MELUCCI: Well, again, I understand that. You're
13 performing a calculation, but my belief would be that when
14 she's offering to surrender the Chase property, Chase loses
15 210, because they're swallowing the home.

16 THE COURT: They're not swallowing the home. They're
17 getting a value. They're getting property worth \$210,000 -- I
18 mean, the property worth \$120,000.

19 Now, if you want to quarrel with the value of that
20 property, that would be a different issue, but you've not
21 taken that on or challenged it.

22 MR. MELUCCI: No, but I'm relieved to see that the
23 court does recognize that there was an intent to cause an
24 economic harm by Ms. Miller's conduct.

25 THE COURT: I'll hear from Mr. Ridge.

1 MR. MELUCCI: All right. The only reason -- there is
2 another side to the case, of course, which is the other term
3 of conviction, Your Honor.

4 THE COURT: We're going to go over that next. That
5 may be what drives the offense level.

6 MR. MELUCCI: Yes.

7 MR. RIDGE: Your Honor, it seems to me that we are in
8 a situation where we have first taken actual loss off the
9 table because there hasn't been any sustained, so we're left
10 only with the question about what the debtor's intent was, and
11 the only evidence we have of the debtor's intent comes from
12 three places: The original plan, the amended plan and the
13 second amended plan.

14 THE COURT: But I can't take the second amended plan
15 into account, because the game was up at that time. The court
16 knew then, you know, that she had not fully disclosed. She
17 was compelled to do it. All of a sudden, \$288,000 is made
18 available to her creditors.

19 So I cannot take that into account in determining
20 what her intent was with respect to the concealment that was
21 taking place prior to that time, because by that time, there
22 was no longer that level of concealment, let's put it that
23 way, that there had been previously.

24 MR. RIDGE: What you can take into account is the
25 testimony of her lawyer who was the person responsible for

1 preparing at least the original plan and the amended plan, and
2 his testimony in this case was that she always intended to
3 retain the house, and that the only reason he filed the
4 amended plan is because he couldn't get a response from
5 Chase.

6 THE COURT: No, because he felt that she couldn't
7 pay -- she wouldn't be able to fund the plan if she kept that
8 property. That's at least what I heard him say. She wanted
9 to retain it, but the view was, to get the plan through, she
10 would have to give up the property.

11 MR. RIDGE: I think that's right.

12 THE COURT: That's what I heard, and so she's giving
13 up the property, but she's walking away under those
14 circumstances from approximately \$90,000 worth of principal.

15 MR. RIDGE: I understand where the court is getting
16 that from Mr. Valencik's testimony. I think what the court --
17 what Mr. Valencik said though was her intention was to keep
18 the property, but what we concluded based on the existence of
19 the objections was that we couldn't get --

20 THE COURT: And what she was telling them was her
21 income. She wasn't truthful with her counsel, so they were
22 giving her apparently the advice that they had based on what
23 her income was.

24 MR. RIDGE: Well, that's another interesting aspect
25 of this, Your Honor, because when we talk about --

1 THE COURT: You're telling me she wouldn't have taken
2 that deal, that amended plan if it had gone through?

3 MR. RIDGE: I'm sorry?

4 THE COURT: She wouldn't have taken that amended plan
5 if it went through and turned that property over?

6 MR. RIDGE: It wasn't her intention to do that.

7 THE COURT: That's what the plan said.

8 MR. RIDGE: I understand that's what the plan said.
9 I think Mr. Valencik has explained why it was the way it was.

10 THE COURT: I can only look at what I can see, you
11 know, from what she agreed to be submitted, the plan was
12 filed, and it was based on something she had agreed to.

13 MR. RIDGE: Well, I don't think there's any question
14 she --

15 THE COURT: Everybody would maybe like to keep all
16 the property that they can have even though you can't afford
17 it. If you have a sudden loss of income and you can't afford
18 to keep your house and you have to give it up, you don't
19 intend to do that, but it's a reality, and you may have to, so
20 it's a different kind of intent.

21 It's a desire, you know, as opposed to being what I
22 can see in the papers she was actually intending to do to
23 Chase.

24 MR. RIDGE: Your Honor, the only point I would make
25 in response to that is if we look at actually when these

1 additional dollars started to come in, they are after she
2 files for the amended -- she files the amended plan and is
3 waiting her emergence from bankruptcy.

4 So I understand the court's point of view on the
5 liquidation of the Chase property, but the truth of the matter
6 is those additional funds come in after that property is
7 already --

8 THE COURT: I understand, but it was coming up to the
9 day that the plan was going to be confirmed. There had been
10 no objections, and if that plan could have been confirmed, she
11 would have turned over the property and Chase would have been
12 out \$90,000, according to her valuations, her opinions, as to
13 what that property was worth.

14 MR. RIDGE: I understand that, Your Honor. I would
15 point out though, and I do think this is not something
16 that's -- you know, we can't go back and make Chase
17 participate, and that's really what Mr. Valencik has testified
18 to. If given the chance, he would have continued to negotiate
19 with Chase, but you just can't when they won't respond.

20 THE COURT: I understand, but you have to look at
21 what actually happened, and I have to make an assessment of
22 what her subjective intention was, and the best that I can do,
23 based on everything that's been presented, is that at the
24 time, on the eve of the confirmation of her plan, it was still
25 proceeding.

1 There wasn't any notification to her counsel, oh,
2 let's do something different. I have more money now. I
3 really want to keep that Florida property. Let's redo it.
4 Let's do something different. It was to move forward with
5 that.

6 Assets are being concealed. The effect on Chase, if
7 the plan would have been confirmed -- and it doesn't have to
8 be a probable loss, you know. It just has to be something
9 that would be intended by her. If the plan could have gone
10 through on the way it was stated, Chase would have suffered a
11 pecuniary harm in the amount of \$90,000.

12 MR. RIDGE: Yes, Your Honor. I understand the
13 court's point.

14 THE COURT: That's my point. I understand the
15 argument that it should be zero because she was really going
16 to -- wanted to pay everybody in full, but based on the
17 documentation and the way the bankruptcy case proceeded and
18 the fact that the concealment was taking place leading up to
19 the December of -- I think it was 2013 -- 2012, December 2012,
20 that concealment was already taking place up to that period of
21 time.

22 She didn't tell the lawyers. The court was not
23 informed. The creditors were not informed. And if the plan
24 had gone through, that's the consequences that would have
25 flowed.

1 So it's not speculation. It's not just trying to
2 look for the largest amount. It's trying to see what her
3 intention was in terms of causing this pecuniary harm.

4 MR. RIDGE: I understand, Your Honor. I would make
5 one other point, Your Honor. I do think it's a point that's
6 worth making.

7 I know the court has practiced in bankruptcy before
8 and there is that tendency for debtors who are about to emerge
9 to try and sort of set the stage for emergence from bankruptcy
10 before they do, and I'm not suggesting that it is reasonable
11 or appropriate, but what I am suggesting is I think all of the
12 evidence that's been presented here today suggests that's what
13 her expectation was is that, look, I don't want to do anything
14 to upset the apple cart. I'm almost out of bankruptcy. Let
15 me get out of bankruptcy and we can do this.

16 At some level, Your Honor, I think this is a very
17 unique circumstance. I know the court has been around
18 bankruptcy cases for a long time.

19 It's very infrequent that a bankrupt debtor who's
20 legitimately bankrupt at the time they file, there's no
21 dispute about that here, suddenly their fortunes take an
22 incredible turn for the better.

23 I'm not trying to minimize the fact that she didn't
24 disclose these things, but what I am trying to point out to
25 the court is you can see in the pattern of when that

1 disclosure began or when -- I'm sorry, when that concealment
2 began, she's actually sort of setting the stage to emerge from
3 the bankruptcy.

4 THE COURT: The problem is she is still in
5 bankruptcy, and you cannot excuse somebody from filing false
6 monthly operating reports where you're not disclosing your
7 income, and it's not like a case where a debtor will say,
8 okay, I'm going to be emerging from bankruptcy, you know, in
9 two months. I have an opportunity to enter into a contract to
10 do this job. I'm going to hold off, and then I'll do
11 something later.

12 You know, you may be foregoing some opportunities,
13 but you are not lying on your -- on what you've actually
14 earned already, and that's where the problem is.

15 MR. RIDGE: I understand that.

16 THE COURT: That's unfortunate that the defendant
17 chose to do this, but she stands here having pled guilty, and
18 it's my job to try to determine what the intended loss is.

19 Having heard the parties, I just want to note that
20 the -- what the court is determining at this stage is the
21 amount of loss pursuant to section 2B1.1 of the United States
22 Sentencing Guidelines. For purposes of this enhancement, loss
23 is the greater of actual loss or intended loss.

24 Here the government is not arguing that there's an
25 actual loss, but wanted the court to find that there was an

1 intended loss of \$356,466.52 which is the total amount of debt
2 on the date that the debtor filed for bankruptcy, when the
3 defendant filed for bankruptcy.

4 Conversely, the defendant is arguing that the amount
5 of loss is zero because the defendant intended to pay the
6 creditors 100 cents on the dollar.

7 Now, determining loss is a question of fact.
8 United States versus Himler, 355 Fed. 3d 735 (Third Circuit
9 2004). In estimating loss, the application notes advise the
10 court need only make a reasonable estimate of the loss. The
11 sentencing judge is in a unique position to assess the
12 evidence and estimate the loss based upon that evidence.
13 United States Sentencing Guidelines section 2B1.1(b)(1)
14 application note 3(C).

15 And as the sentencing guidelines point out, if this
16 case goes on appeal, the court's loss determination is
17 entitled to appropriate deference.

18 Now, though the government bears the burden of proof
19 in guideline situations, the burden of production may shift to
20 the defendant once the government presents prima facie
21 evidence of a given loss figure. United States versus
22 Geever, 226 Fed. 3d 186 (Third Circuit 2000).

23 However, the government always bears the burden of
24 proving by a preponderance of the evidence that the facts
25 supporting sentencing enhancement and the defendant does not

1 have to prove the negative to avoid the enhanced sentence.
2 United States versus Diallo, 710 Fed. 3d 147 (Third Circuit
3 2013).

4 As noted, this is a fact driven inquiry. The
5 question is how much money, if any, did defendant intend to
6 deprive her creditors of through her unlawful conduct, and the
7 district court must determine the defendant's subjective
8 expectation, not the risk of loss to which he may have exposed
9 his victims. United States versus Yeaman, 194 Fed. 3d 442
10 (Third Circuit 1999).

11 Because intended loss focuses on the defendant's
12 subjective intention, not on the possible or potential harm
13 defendant could have caused, the district court errs when it
14 simply equates potential loss with intended loss without
15 deeper analysis. United States versus Geevers, 226 Fed. 3d
16 186 (Third Circuit 2000).

17 Intended loss, however, is not necessarily the amount
18 the defendant expects to obtain or deprive others of. While a
19 defendant may not expect to obtain the full value of his
20 fraudulent scheme, expectation is not synonymous with intent
21 when a criminal does not know what he may expect to attain but
22 intends to take what he can get, what he can.

23 This is why, when I focused on the disclosure
24 statement for the amended plan where there was a proposal in
25 the plan to treat Chase by providing Chase with the property

1 valued at \$120,000 according to the debtor's opinion when the
2 amount of the principal was \$210,000, so this is -- the court
3 would consider that to be an intention to take what she could
4 from them.

5 MR. RIDGE: May I ask the court one question about
6 that?

7 THE COURT: Yes.

8 MR. RIDGE: There is equity in the other property, in
9 the PNC property.

10 THE COURT: Chase wasn't getting that. The intent
11 was -- I read the plan very carefully, and the plan said that
12 Chase was going to take that in full satisfaction and would
13 not have a deficiency.

14 MR. RIDGE: I know that's not the language in the
15 plan.

16 THE COURT: That's what the plan says.

17 MR. RIDGE: But the other language in the plan, and I
18 did point this out for Mr. Valencik is 3.8, the language in
19 that paragraph remains the same, saying that if your secured
20 claim is reduced and you have an unsecured portion that that
21 would be considered as part of the unsecured claims.

22 THE COURT: I understand that, but that's trumped by,
23 at least in my view, the more specific provisions as to how
24 Chase was going to be dealt with, and that appeared to the
25 court to be the intention of the plan.

1 Whether or not it was a realistic expectation is
2 something that may be different, but if it could have gone
3 through, would she have taken it? My best guess is -- not
4 guess, but my best estimate would be that she would have, and
5 it's confirmed by the e-mail saying, you know, I'm getting
6 ready to come out. Let's all be quiet, you know.

7 This would not have been something that would have
8 been ruffled by stating, oh, let's take Chase's unsecured
9 amount and put it into the unsecured creditors amount, because
10 then you would have to adjust would they be able to be paid
11 100 cents on the dollar with the projections that would go
12 into that particular plan which does not take into account the
13 assets that had been accumulated and not disclosed to the
14 court, which we now know was \$288,000 at a minimum.

15 Those are where the court would -- what the court's
16 finding would be that here, the intended loss is \$90,000.

17 MR. RIDGE: All right, Your Honor.

18 THE COURT: So based on that, just to run through the
19 guidelines, how it would affect the guidelines. If the loss
20 amount, the base amount -- the base offense level is six, and
21 under Section 2B1.1(b)(9)(B) for criminal act committed during
22 bankruptcy proceedings, you add two levels.

23 That brings it up to an offense level of eight. When
24 the loss amount is between \$40,000 and \$94,999, you add six
25 points, so that would be -- six levels, I'm sorry, that brings

1 you up to an offense level of 14.

2 There is an acceptance of responsibility which
3 reduces it two levels, so the total offense level would be 12.
4 Criminal history category is Roman numeral I, zero criminal
5 history points. The sentencing range is 10 to 16 months.
6 Term of supervised release is one to three years and the fine
7 is \$5,555 to \$55,000.

8 Now we need to talk about the calculations with
9 respect to the other offense. Mr. Melucci?

10 MR. MELUCCI: Yes, Your Honor.

11 THE COURT: Is this --

12 MR. MELUCCI: This is the count of conviction that --
13 31 USC Section 5324(c)(1).

14 THE COURT: We have stipulations that will deal with
15 this.

16 MR. MELUCCI: So I think, Your Honor, your intended
17 findings adequately calculate the -- sufficiently calculate --

18 THE COURT: I didn't think they did.

19 MR. MELUCCI: Except as to the loss. We have a
20 stipulation that there was a money judgment of \$120,000 and
21 that the -- presumably, therefore, the loss was in excess of
22 \$100,000 which occurred over the course of a year.

23 And so your guideline calculation -- my guideline
24 calculation, I think, is as follows: Base offense level of
25 six. 2S1.1 directs us to look at the loss under 2B1.1 which

1 is an additional eight levels.

2 THE COURT: Don't we have to increase it by two
3 levels because of bulk cash smuggling?

4 MR. MELUCCI: Yes.

5 THE COURT: That's United States Sentencing
6 Guidelines Section 2S1.3(b)(1)(B).

7 MR. MELUCCI: That's correct.

8 THE COURT: And they stipulated to the --

9 MR. MELUCCI: Loss range is between -- 2B1.1 is 95 to
10 \$150,000, so that's an additional eight levels.

11 THE COURT: Is there the enhancement under Section
12 2S1.3(b)(2) where there's a pattern of unlawful activity
13 involving more than 12 -- \$100,000 in a 12 month period?

14 MR. MELUCCI: Yes, there is.

15 THE COURT: Is there evidence that this took place on
16 at least two occasions?

17 MR. MELUCCI: Well, there's a stipulation, Your
18 Honor, that we entered into the record at the beginning of the
19 hearing that Ms. Miller was transporting in excess of \$100,000
20 in foreign currency into the United States during a 12 month
21 period pursuant to 2S1.3(b)(2).

22 THE COURT: Was it at least two times?

23 MR. MELUCCI: Yes, it would be two times, because we
24 have two trips that the evidence would have shown, the trip to
25 Australia.

1 THE COURT: Does the defendant agree with that?

2 MR. RIDGE: Yes, Your Honor.

3 THE COURT: So that is another two level enhancement
4 under Section 2S1.3(b)(2).

5 MR. MELUCCI: Correct.

6 THE COURT: So you get six, two.

7 MR. MELUCCI: Eight for loss.

8 THE COURT: Eight for loss. Gets you up to an 18.

9 MR. MELUCCI: Correct.

10 THE COURT: We take away three for the acceptance of
11 responsibility.

12 MR. MELUCCI: Correct.

13 THE COURT: And that brings you down to 15.

14 MR. MELUCCI: 18 to 24 months. Now, you had
15 indicated in your tentative findings the use of a minor.

16 THE COURT: But that's gone now because --

17 MR. MELUCCI: I negotiated that.

18 THE COURT: You negotiated that as part of this, so
19 here under -- for Count 1 under criminal action No. 16-132,
20 the adjusted offense level is 15. The criminal history
21 category is Roman numeral I because there is zero criminal
22 history points. The sentencing range is 18 to 24 months. The
23 term of supervised release is one to three years, and the fine
24 is \$7,500 to \$75,000.

25 And when the counts are grouped, the court takes the

1 count that yields the highest offense level so regardless --
2 unless the court would have found, you know, a much higher
3 loss level on the bankruptcy fraud count, that is lower than
4 the guidelines for Count 1 at criminal No. 16-132, so it's
5 that guideline that will control.

6 So the guidelines here are 18 to 24 months. The term
7 of supervised release is one to three years, and the fine is
8 \$7,500 to \$75,000, and my recollection is that the statutory
9 maximum term of imprisonment is five years and the maximum
10 term of supervised release, I believe, is three years.

11 MR. MELUCCI: Yes. Also, there is a money judgment
12 as part of it.

13 THE COURT: That you've agreed to for --

14 MR. MELUCCI: \$120,000.

15 THE COURT: So what the court needs to hear now is
16 evidence or argument as to what the sentence ought to be.

17 Those will be my final findings with respect to the
18 guidelines, so now would be the time for -- it's about quarter
19 after 4:00 now. I don't know -- we can go to 4:30 today or we
20 can come back tomorrow and start this phase of it unless you
21 have some witnesses that can't be here tomorrow.

22 MR. MELUCCI: Your Honor, the government doesn't have
23 any witnesses at this point.

24 MR. RIDGE: May I have one moment, Your Honor?

25 THE COURT: Yes, you may.

1 MR. VERDREAM: Excuse me, Your Honor. These are
2 letters that were just sent directly to the court.

3 THE COURT: Yes, there were four of them now. You
4 need to give them back to me.

5 MR. VERDREAM: Don't file them.

6 THE COURT: They should be filed of record.

7 MR. VERDREAM: I received actually more this weekend.

8 THE COURT: I need to see them if you want me to
9 consider them.

10 MR. VERDREAM: Absolutely. I'll file them as soon as
11 I go back to the office.

12 THE COURT: Okay.

13 MR. VERDREAM: As well as these two that were sent
14 directly to the court.

15 THE COURT: We can take a break at 4:30 and continue
16 it tonight and finish it up tonight.

17 MR. RIDGE: Your Honor, if we're going to break at
18 4:30 tonight, let's meet tomorrow morning, because I do have
19 several character witnesses that I want to put on, and I'm
20 sure the defendant wants a chance --

21 THE COURT: We reserved time for tomorrow.

22 MR. RIDGE: The defendant wants a chance to present
23 to the court and so do I, so for my point of view, Your Honor,
24 it's probably best that we break today and come back tomorrow
25 morning.

1 THE COURT: We'll be back here at 10:00 o'clock
2 tomorrow.

3 THE DEPUTY: All rise.

4 (At 4:18 p.m., the proceedings were adjourned.)

5 C E R T I F I C A T E

6 I, BARBARA METZ LEO, RPR, CRR, certify that the
7 foregoing is a correct transcript from the record of
8 proceedings in the above-entitled case.

9 \s\ Barbara Metz Leo
10 BARBARA METZ LEO, RPR, CRR
Official Court Reporter

06/26/2017
Date of Certification